

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



**74-2078**

In The

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pk

UNITED STATES COURT OF APPEALS

For the Second Circuit

In the Matter of

LAW RESEARCH SERVICE, INC.

Appellant.

On Appeal from the United States District Court for the Southern District of New York from the Order of Honorable Constance Baker Motley Affirming the Order of Asa S. Herzog Bankruptcy Judge, allowing the Secured Claims of John Herbert Crook

JOINT APPENDIX

KRAUSE, HIRSCH & GROSS  
Attorneys for Appellant  
By Elias C. Hoppenfeld, Esq.  
Of Counsel  
41 East 42nd Street  
New York, New York 10017  
986-1122

RICHARD L. ARONSTEIN, Esq.  
Attorney for Appellee  
275 Madison Avenue  
New York, New York 10016  
683-2370

OCT 21 1974

U.S. COURT OF APPEALS  
SECOND CIRCUIT

2

**PAGINATION AS IN ORIGINAL COPY**

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TRIAL EXHIBITS

Law Research Exhibits:	Admitted page	Printed page
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1. Settlement Agreement dated November 28, 1969.....      3a-8      4a-1-5
2. Assignment dated November 28, 1969.....      3a-9      4a-6-8

Crook Exhibits:

- A. Affidavits of Paul Weiner dated October 22,  
1970 in the action of Law Research  
Service vs. J.H. Crook, Index No.  
17629, 1970 .....      3a-41      3a-40-41

NAME OF BANKRUPT/DEBTOR  Last First Middle  <b>CO INDUS. CORP., INC.</b>				DIST. NO.	DIV. NO.	DOCKET NO.
				CHAPTER OR SECTION <b>12-2-3</b>		CHECK IF <input checked="" type="checkbox"/>
				DATE PETITION FILED <b>JUN 16 1971</b>		CCUPATION <input checked="" type="checkbox"/>
				DATE CLOSED		<input checked="" type="checkbox"/>
				DISCHARGE <input checked="" type="checkbox"/>	Granted <input type="checkbox"/> Denied <input type="checkbox"/> Waived or not applied for <input type="checkbox"/>	(Check one)
				DATE DISCHARGED		<input checked="" type="checkbox"/>
				PETITION DISMISSED <input type="checkbox"/> YES	DATE DISMISSED	CHAPTER UNDER WHICH CASE WAS PENDING WHEN DISMISSED
				NAME OF JUDGE		
ADDRESS OF BANKRUPT/DEBTOR (Number and Street)  <b>CO INDUS. CORP.</b>				NAME OF REFEREE		
CITY <b>New York</b>	ZONE	COUNTY <b>New York</b>	STATE <b>N.Y.</b>			
NO ASSET CASES ONLY CLAIMS AS SCHEDULED <input checked="" type="checkbox"/>		TOTAL <b>\$</b>	PRIORITY <b>\$</b>	SECURED <b>\$</b>	UNSECURED <b>\$</b>	
ATTORNEY FOR BANKRUPT OR DEBTOR	NAMES AND ADDRESSES <b>Ferraro, Marshall &amp; Gross 11 E. 42 St. N.Y.C.</b>					
ATTORNEY FOR PETITIONING CREDITORS						
RECEIVER						
ATTORNEY FOR RECEIVER						
TRUSTEE						
ATTORNEY FOR TRUSTEE						
CHANGES OF PRINCIPALS						

DATE	PROCEEDINGS
7-22-71	Filed certified copy of order authorizing continuation of business.
8-31-71	Filed schedules of assets and liabilities, statement of affairs and statement of executory contracts..6cs.
9-20-71	Filed referee's certificate pursuant to rule XI-10...
1-19-72	Filed notice of entry with (referee) order attached.
1-28-72	Filed certificate on review of order dtd.1-17-72 - ret. 2-15....
2-9-72	Filed memorandum of law in support of debtor's petition to review..
2-10-72	Filed memorandum of West Publishing in opposition to petition to review.
2-17-72	Filed certified copy of referee's order amending schedule A-2

AP - Filed memo endorsed on certificate for review filed 1-28-72...We have carefully considered the decision of the learned referee\*\*\*accordingly the referee's order of 1-17-72 is in all respects affirmed\*\*\*MacMahon, J.  
( copy sent to Referee)

March 9-72 Filed notice of appeal from order of Judge MacMahon dated Feb. 18, 72 affirming the order of Referee Asa S. Herzog.

---Filed by Hillberg & Weiss, Attys for Debtor  
Office & P.O. Address, 2 Pennsylvania Plaza, N.Y., N.Y.  
Copy: Mailed to White & Case, Esq., Attys For West Publishing Co.  
14 Wall Street, New York, NY 10005.

March 10-72 Filed Notice to take Deposition, Applications of James A. Cole  
Alfred S. Julian and Norman M. Sjorsky, claimants, to determine and enforce attorney's fees, etc. (sent to referee)

March 10-72 Filed Order to Show Cause, that defendant West Publishing Co. show cause at a certain term of this Court to hold in ready on March 14, 72 at 4:PM why an order should not be made herein statuting the trial of the action pending in the U.S. Court, Southern District of N.Y., entitled "West Publishing Co. v. Law Research Service, Inc.", 66 Civ. 1730, pending the hearing and determination by the U.S. Court of Appeals.

3-15-72 Filed Affidavit in opposition by Raynor M. Hamilton, Dated 3-10-72

Mar. 15-72 Memo endorsed on above order. Motion for stay denied without prejudice to an application to the Court of Appeals. Bonsal, J. 3-14-72.

3-30-72 Filed notice of transmittal to the U.S. Court of Appeals for the Second Circuit on this 30, day of March 1972 the certified record.

6-20-72 Filed certified copy of Referee's order amending schedule A-3, dated 6-19-72.

6-22-72 Rec'd from Referee copies of affidavits and waivers in re confirmation.

6-22-72 Rec'd from Referee copy of application to confirm arrangement.

6-22-72 Filed certified copy of Referee's order confirming plan....dated 6-20-72.

9-20-72 Filed Referee's certificate on Review of order dated 7-18-72. Ret. 10-10-72, 10:30 A.M., Room 110. (Brown folder of documents to be returned to Referee)

10-5-72 Filed affidavit in opposition to petition of debtor to review Referee's order, by Levin & Weintraub, Attys for Official Creditors' Committee.

10-18-72 Filed Memo-Endorsed on back of Referee Certificate on Review of order of 7-18-72. Withdrawn on Consent. So Ordered Pollack, J. n/r (Brown Folder ret'd to referee)

10-18-72 Filed Order Withdrawing petitions to Review Referee's order dated 7-18-72.

10-26-72 Filed certified copy of Referee's order directing interim distribution. Dated 10-26-72.

11-10-72 Filed notice that debtor Law Research Service, will take deposition of Bernard Needle at 10 A.M. on Nov. 17, 1972, on 21st floor of 41 E. 42nd St. (Brown Folder ret'd to referee)

ONLY COPY AVAILABLE

DOCKET NUMBER

DATE	PROCEEDINGS
1-31-73	Filed Referee's certificate on Review of Order dated 12-7-72. Ret. 2-20-73, Room 110, 10:30 A.M. Brown folder of papers to be returned to Referee.
2-13-73	Filed Referee's certificate on review of order dated Dec. 21, 1972. Ret. 2-27-73, Room 110, 10:30 A.M. Referee's brown folder to be returned to him.
2-16-73	Filed Brief in support of order on appeal allowing claim of General Auto. Inc., in the sum of \$133,524.05 filed by Sherman & Citron attys for General Auto. Inc.
2-26-73	Filed stipulation that motion on calendar for Feb. 27, 1973, is adjourned by consent to March 20, 1973.
3/7/73	Filed Stipulation that petition for review Dated March 13, 1973 is adjourned until April 3rd, 1973.
3-16-73	Filed memo of law in support of debtor's petition to review the order of Referee Herzog of 11-8-72. By atty's for debtor.
4/2/73	Filed Stipulation that Petition for Review of the Order of ASA S. HERZOG be adjourned upon consent of both parties from April 3rd until <u>May 4th, 1973.</u>
4-9-73	Rec'd from A. Daniel Fusaro, Clerk, U.S. Court of Appeals, a true copy, that appeal is dismissed. n/r
4-10-73	Filed Referee's certificate on review of order dated Feb. 16, 1973. Ret. April 24, 1973, Room 110, 10:30 A.M. Referee's brown envelope of exhibits to be returned to him.
4/18/73	FILED ENDORSEMENT OF JUDGE PIERCE DATED: 4/16/73, RE: PETITION TO REVIEW, DECISIONS, FINDINGS OF FACT, AND CONCLUSIONS OF LAW BY: REFEREE HERZOG ETC., SAID IS AFFIRMED PURSUANT TO ORDER DATED: 12/21/72.
4/18/73	EXHIBITS RETURNED.
4-19-73	Filed memo in answer to debtor's petition to review in respect of the claim of Martin Lutz Appellate Printers, Inc. Nos. 53 & 1. By Bernard Kronthal, Att'y for claimant.
5-3-73	Filed stipulation that petition to review be adjourned from May 8, 1973 to <u>June 12, 1973.</u> Agreed by atty's for respective parties. n/r
5/18/73	Filed Notice of Appearance that special attorneys Re: Claim No. 502 are to receive all copies of papers etc., Dated: 5/17/73. (Original to Referee)
5/18/73	Filed Memorandum of Points and authorities in support of Petition to Review.

CONTINUED ON PAGE 4.

PAGE #4

## LAW RESEARCH SERVICE INC. 71 B 598

DATE	PROCEEDINGS
6/8/73	Filed Memorandum submitted in support of Debtor's Petition To Review Decision and order of Hon. Asa S. Herzog, Re: Martin Lutz Appellate Printers Inc.
6/8/73	Filed ENDORSEMENT, re: Petition to Review and claim ; of (MARTIN LUTZ APPELLATE PRINTERS, INC.) It appears from the record that Referee Herzog reached a proper and just decision after a full inquiry and hearing. The petition to Review is denied and dismissed. So Ordered. JUDGE RYAN. Dated: 6/8/73 (SEE: ENDORSEMENT FOR FULL DETAILS.) COPY TO REFEREE) AND BROWN ENVELOPE RETURNED)
6/12/73	Filed Copy ;of Application and Order why Sheldon Lowe, Disbursing Agent, should not be directed to pay the claim of General Automation, Inc. in sum of \$133,524.05 in accordance with Debtor's Plan. Ret: JUNE 18th, 1973 at 10:30 A.M. in Room 234. Order signed by Referee Herzog, Dated: 6/11/73., and proof of service.
6-15-73	Filed affidavit of Service by Bernard Kronthal, Att'y for claimant , and notice of entry of memo and order dated June 6, 1973.
6-25-73	Filed notice of appeal from order of Judge Ryan entered June 8, 1973, affirming order of Referee Herzog, allowing claim #53 filed on behalf of Lutz Appellate Printers, Inc., in the sum of \$20,250.41 as a secured claim. Filed by Jane Compton, Esq., Att'y for the Appellant Debtor, Law Research Service, 237 West 11th St., New York, N.Y. 10014. Copy mailed to Bernard Kronthal, Esq., Att'y for the claimant, Martin Lutz Appellate Printers, Inc., New York, N.Y. 10013.
6-25-73	Filed notice of appeal from order of Judge Pierce, entered April 16, 1973, affirming the order of Referee Herzog allowing Claim #125 filed on behalf of General Automation, Inc., in the sum of \$133,524.05 as a general claim. Filed by Jane Compton, Esq., Att'y for the appellant debtor, Law Research Service, Inc., 237 West 11th Street, New York, N.Y. 10014. Copy mailed to Sherman & Citron, Esqs., Att'y for the creditor, 1290 Avenue of the Americas, New York, N.Y. 10019.
6/29/73	Filed Motion, together with Affidavit, Affirmation and Affidavits of service by mail., for an Order relieving Bernard Kronthal, Esq. as attorney of record for the claimant Martin Lutz Appellate Printers, Inc. and substituting David M. Ettinger, Esq. in place instead, on for July 10th, 1973 at 10:00 A.M. in Room 110., Dated: 6/28/73.
7-6-73	Filed opposing affidavit with proof of service by Bernard Kronthal, Att'y of record for for claimant, Martin Lutz. Ret. July 10, 1973, Room 110, 10:00 A.M.
7/6/73	Filed Order with Notice of Entry with Affidavit os Service upon Sheldon Lowe, Esq. of Krause, Hirsch & Gross, Esqs., Dated: 7/5/73.
7-11-73	Filed Referee's certificate on review of order dated May 6, 1973. Ret. July 31, 1973, 10:30 A.M., Room 110. (Referee's brown folder to be returned to him.)

CONTINUED ON PAGE 5.

DOCKET NUMBER

DATE	PROCEEDINGS
7/11/73	Filed Stipulation by: Attorneys for MICHAEL S. LANDES, that Petition for Review in above matter of order of REFEREE HERZOG, be adjourned upon consent of both parties from 7/17/73 until AUGUST 28th, 1973., Dated: 7/5/73 (Returned to PART 1 CLERK)
7/18/73	Filed ORDER TO SHOW CAUSE to Stay Payment with A STAY, that SHELDON LOWE, Disbursing Agent be stayed from paying the claim of GENERAL AUTOMATION, INC., etc. RET. JULY 19TH, 1973 at 3:30 P.M. in Room #110., JUDGE : STEWART, JR. DATED: 7/16/73.
7-24-73	Filed stipulation that petition to review be adjourned on consent of both parties from July 31, 1973 until August 28th, 1973. Krause, Hirsch & Gross, Atty's for Law Research Service, Inc. and Guilfoil, Symington & Petzall, atty's for Randolph C. Wohltman. ADD. TO 7-25-73 (See Calendar of Aug. 28, 1973)
7/27/73	Filed PROPOSED ORDER and NOTICE, staying the distribution of the moneys payable to GENERAL AUTOMATION, INC. pursuant to Debtor's Plan of Arrangement pending Debtor's appeal of the order allowing the claim of GENERAL AUTOMATION INC. ORDERED that SHELDON LOWE, Disbursing Agent is authorized to pay the claim of GENERAL AUTOMATION INC. in the sum of \$33,381.01 and is authorized and directed to receive any stop payment orders which he has issued in connection with the distribution and payment of the aforesaid sum of \$33,381.01 to GENERAL AUTOMATION, INC. JUDGE STEWART, Dated: 7/27/73. (COPY TO REFEREE)
7/31/73	Filed NOTICE TO THE DOCKET CLERK: The record on appeal in the above entitled proceeding has been certified and transmitted to the United States Court of Appeals for the Second Circuit this 31st day of July 1973.
7/31/73	Filed MEMO-ENDORSED on back of Motion filed 6/29/73. endorsement reads: Pursuant to Rule 4(c) of General Rules of this Court, it is Ordered that David M. Ettinger, Esq. is hereby substituted in place and stead of the said Bernard Kronthal, as Attorney of Record for the claimant. The parties are directed to appear before the Honorable, Asa S. Herzog to clarify the question concerning the \$19,768.68 now being held in a trust account by Bernard Kronthal, Esq. Accordingly, claimant's appreciation that the funds be transferred at this time is denied pending a hearing before Referee Herzog. So ordered. JUDGE STEWART, Dated: 7/31/73. COPY TO REFEREE.
8-27-73	Filed memorandum of points and authorities in opposition to petition to review as filed by Michael S. Landes, by Att'y for debtor. Ret. 8-28-73.
8/28/73	Filed Stipulation re:petition to review order of Referee Herzog, -adjourned upon consent from 8/28/73 to: 9/25/73. JUDGE WYATT, DATED: 8/28/73. (rec'd. 10/21/73) <u>CONTINUED ON PAGE 6.</u>

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LAW RESEARCH SERVICE, INC.

NO. 71 B 5

DATE	PROCEEDINGS
12/13/73	FILED MEMO-ENDORSED on back of Certificate on Review of Order Dated:12/7/72...petition by Michael S.Landes for review of an order of Referee Herzog filed:12/7/72,etc. The order of Referee Herzog is affirmed. So Ordered.JUDGE MURRAY,Dated:9/14/73. (COPY TO REFEREE)
12/17/73	FILED Memorandum of points and authorities in support of Petition to review;by:Michael S.Landes,a creditor and submitted by Hahn,Hessen,Margolis and Ryan.attys.
12/21/73	FILED Stipulation re: petition for review between attorney for Debtor and attorneys for Randolph C. Mahan on the date from 9/25/73 to 10/23/73. JUDGE GRIESA, Dated:9/24/73.
10/21/73	FILED SETTLEMENT OF UNSIGNED ORDER -- RE -- CENTRAL AUTOMATION, INC.'s motion for an award of counsel fees to be imposed against the Debtor,etc.....FILED ON BACK OF NOTICE OF SETTLEMENT ETC.....On consent of the parties this application has been deferred pending a decision on this matter, docket number 73-2113, by the United States Court of Appeals for the Second Circuit.JULIE STEWART, DATED:10/10/73 (COPY TO REFEREE)
10/23/73	FILED Order withdrawing Petition to Review re: order of Hon. S. Herzog dated:5/8/73,by Krause,Hirsch and Gross,attorneys for Debtor..JUDGE MACHANON, DATED:10/23/73.COPY TO REFEREE (BROWN FOLDER RETURNED.)
1/24/74	FILED MEMO-ENDORSED on back of UNSIGNED OSC etc.....Application for this show cause is withdrawn by counsel for applicant today.After discussion with the Court this withdrawal is without prejudice.JUDGE TYLER,Dated:1/24/74.COPY TO BROWN JUDGE.
2/4/74	Received from Bankruptcy Judge, NOTICE OF APPEAL TO DISTRICT COURT. from the Order of Referee entered on:11/12/73 allowing claim of John Herbert Crook,etc. RET. TUESDAY, MARCH 19th, 1974 at 10:30 A.M. in Room No. 506. BANKRUPTCY J'S. BROWN FOLDER TO BE RETURNED. (Appeal dated:11/19/73)
2/14/74	Received from Bankruptcy Judge NOTICE OF APPEAL TO DISTRICT COURT from the order of Referee entered on:10/31/73 re: claim of United States Fidelity and Guaranty Company in the sum of \$17,123.69.RET. TUESDAY, MARCH 26th, 1974 at 10:30 A.M. in Room 506. (Appeal dated:11/9/73)BROWN FOLDER TO BE RETURNED.
2/19/74	Filed Brief for appellant (re:John Herbert Crook)sub. by: Krause,Hirsch and Gross,attys. for Appellant and Botwin,Hays, Sklar and Herzberg,special counsel to Appellant.
2/22/74	FILED NOTICE OF APPEAL TO THE DISTRICT COURT,from the order of Bankruptcy J. ent.on:1/11/74 & in accordance with his decision dated 11/21/73.(LAWRENCE A. BENGLERT,JR.,plaintiff) RET.APRIL 3rd, 1974 at 10:30 A.M.TUESDAY, in Room 506.BROWN FOLDER TO BE RETURNED.

DOCKET NUMBER

DATE	PROCEEDINGS
3/6/74	Filed Brief for respondent (JOHN HERBERT CROOK) by Richard L.Aronstein, attorney for respondent.
3/11/74	Filed Stipulation extending time (LAWRENCE A. BENGERT, to file brief. Dated: 3/6/74. AND ORDER which is approved extended to and including the 26th day of March, 1974. JUDGE POLLACK, DATED: 3/11/74.
3/12/74	Filed Reply Brief for Appellant , sub. by: Krause, Hirsch & Gross attorneys for Appellant and Botein, Hays, Sklar & Herzberg, special counsel to Appellant. Dated: 3/11/74. (Re: John Herbert Crook)
3/25/74	Filed Stipulation extending time of the appellant-Law Research Service, Inc. to serve and file their brief etc. (from 3/26/74 to: 4/16/74. By Krause, Hirsch and Gross, attorneys for Law Research Service, Inc., Ellis C. Hoppenfeld, Esq. of Counsel for Law Research Service Inc. and Kramer, Marx, Greenlee and Backus, attorneys for U.S. Fidelity and Guaranty Co. Dated: 3/14/74. SO ORDERED, JUDGE MOTLEY, DATED: 3/26/74.
3/26/74	Filed Brief of appellant (LAWRENCE A. BENGERT, JR.) sub by: Richard Allyn, Shaffer, attorney for Appellant, Date 3/26/74.
3/27/74	Filed Stipulation extending time (U.S.F. & G) from 3/26/74 to: 4/16/74.: JUDGE MOTLEY, DATED: 3/26/74.
4/1/74	Filed Brief for Appellant, sub. by: Krause, Hirsch and Gross attorneys for Appellant, Dated: 3/28/74.
4/8/74	Filed Brief for Appellant sub. by: Krause, Hirsch and Gross Attorneys for Appellant, Dated: 4/4/74. RE: LAWRENCE A. BENGERT, JR.
4/10/74	Filed MEMO-ENDORSED (on back of Brief of Appellant, Dated: 3/26/74) .... Matter adj. to: MAY 21st. 74 BENGERT, JR. So Ordered. JUDGE TENNEY, DATED: 4/9/74.
4/17/74	Filed Stipulation extending time and Order..... adjourned from 4/16/74 to: 5/7/74. JUDGE PIERCE, DATED: 4/16/74. (U.S. FIDELITY)
4/30/74	Filed Brief of Appellee( U.S.F. & G. CO. ) sub. by: Windels and Marx, Attorneys for Creditor-Appellee.
5/2/74	Filed BRIEF OF APPELLEE (LAWRENCE A. BENGERT, JR.) sub. by: Richard Allyn Shaffer, attorney for Appellee. Dated: 5/1/74.
5/20/74	Filed POST-ARGUMENT BRIEF OF APPELLEE (U.S. Fidelity and Guaranty Co's unsecured claim, etc.) sub. by: Windels and Marx, attorneys for Creditor-Appellee.

CONTINUED ON PAGE 8.

DATE	PROCEEDINGS
7/2/74	Filed ENDORSEMENT (on back of Notice of Appeal, 2/4/74) ....Debtor-Appellant petitions this court for review of an order by Bankruptcy J.Herzog overruling the objections of debt appellant Law Research Service, Inc. to a secured claim filed in those arrangement proceedings by creditor-appelee JOHN HERBERT CROOK., etc..The Bankruptcy Judge's finding that the assignment was perfected is, accordingly, affirmed.JUDGE MOTLEY,DATED:6/27 <u>COPY TO BANKRUPTCY JUDGE, HERZOG, BR OWN FOLDER RETURNED.SEE ENDORSEMENT FOR FULL DETAILSQ</u>
7/26/74	Filed TRUE COPY of CA Order of Hon.PIERCE be and it hereby is affirmed in part and reversed in part and that the action be as it hereby is remanded to said District Court for further proceedings consistent with the opinion of this court.A.Daniel H. Clerk.NOTICES MAILED TO: Krause,Hirsch and Gross,attys for Deb Appellant,41 East 42nd Street,New York,N.Y. 10017 and Sherman Citron,attorneys for Creditor-Appellee(General Automation, Inc. attys.address,1290 Avenue of the Americas,New York, N.Y. 10019 RAYMOND F. BURGHARDT,CLERK. Filed (Special Counsel to Debtor-appellant) notice of appeal. Mailed notice. (see APPEAL for details)
JUL 29-74	Aug 1, 74b Received NOTICE OF APPEAL from Order of Bankruptcy J.Herzog, Dated:6/28/74.RET: SEPTEMBER 10TH, 1974 at 10:30 A.M. in room 506. Folder to be returned .
Aug. 1, 74	Filed DESIGNATION OF CONTENTS FOR INCLUSION IN RECORD ON APPEAL: AND STATEMENT OF ISSUES.
7/31/74	Filed REPLY BRIEF for appellant from order of Hon.Herzog overruled objections of appellant, Law Research, to a secured claim by: U.S.Fidelity and Graranty Co.etc.sub.by:Krause,Hirsch and Gross, attys.for Appellant,Dated:5/3/74.
7/31/74	Filed REBUTTAL BRIEF of Appellee,US Fidelity and Graranty Co., that order appealed from should be affirmed.,etc.sub.by:Windels and Mark,attys.for appellee.
7/31/74	Filed MEMORANDUM AND ORDER (appeal from an Oct.1973 decision of Bankruptcy J.Herzog.etc.)....case is remanded to Judge Herzog, so that he may consider the effect,if any,of the Second Circuit Law Research opinion on his decision.JUDGE BAUMAN,DATED:7/31/74. <u>COPY TO BANKRUPTCY JUDGE HERZOG,FOLDER RETURNED....ALSO ALL PAPERS PERTAINING TO APPEAL.</u>
8/26/74	Filed APPELLANT'S BRIEF (claimants,Alton W.Heriba and Evelyn K. Hembra have appealed from a decision of the Bankruptcy Ct.granting debtor's motion to declare void an assignment held by the claimants,as security for judgment on which the sum of \$22,500 is still unpaid.)sub. by:Otterbourg,Steindler Houston and Rosen,attys.for claimant appellants.

CONTINUED ON PAGE 9.

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK

SECURED JM

$$|2a-1$$

**IN THE MATTER  
OF**

**IN PROCEEDINGS FOR  
AN ARRANGEMENT**

LAW RESEARCH SERVICE, INC., JUL 16 1972

71 B 598

- 1 -

*and carrying on business at No.  
County of*

State of

(or as appears below)

County of  
(c) CORPORATION

That he is the of and carrying on business  
a corporation organized and existing under the laws of the State of in at No.  
County of State of and is duly authorized to make this  
proof of claim on its behalf. Said corporation is hereinafter designated as the claimant.

2. That LAW RESEARCH SERVICE, INC.,  
the above named Debtor was at and before the filing by [or against] him of the petition for an arrangement, and still is,  
justly and truly indebted [or liable] to claimant in the sum of \$25,923.65, with interest at the rate of  
8% per annum from "November" 25, 1959 to date of payment  
3. That the consideration of this debt [or liability] is as follows:

On November 28, 1969 Debtor duly assigned its right, title and interest in and to its claim, judgment and proceeds therefrom against The Western Union Telegraph Company to the extent and in the amount of \$25,923.63 with interest at the rate of 8% per annum from November 28, 1969 to the date of payment, in an instrument in writing, copy of which is annexed hereto.

~~X~~ Order, wares and merchandise sold and delivered to the Debtor at the special instance and request of the Debtor at the agreed amount remunerative set forth in the annexed statement which is made a part hereof.

That no part of the debt [or liability] has been paid, except none.

5 That there are no set-offs or counterclaims to the debt [or liability], except none.

6. That claimant does not hold, and has never held, any personalty claimant's order, or to untroublous knowledge or belief, for claimant's use, had or received, any security or securities for the debt [or liability], X as set forth above.

*-----+ The debt is bound up in a separate account with the debts which the debtor has  
-----+ incurred in respect of the same object, so that the debtors for that object may be  
-----+ distinguished from the debtors for other objects.*

Dated at Austin, Texas  
this 17th day of July

1072

For more information, contact [AMS.org](http://www.ams.org).

STATE OF TEXAS

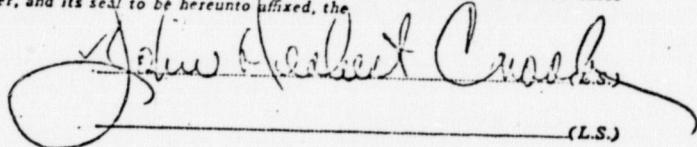
To RICHARD L. ARONSTEIN, KRISEL, LESSALL, MINTZ & DOWLING or representative:  
The undersigned, JOHN HERBERT CROOK

of 1110 San Jacinto Blvd, Austin, County of Travis State of Texas  
does hereby authorize you, or any one of you, with full power of substitution, to attend all meetings of creditors of the debtor aforesaid, and adjudicaments thereof, at the places and times appointed by the court, and for the undersigned, and in the name of the undersigned to receive payment or delivery of money or of other consideration due the undersigned, and to receive payment or delivery of money or of other consideration due the undersigned, and for any other purpose in the undersigned's interests whatsoever; and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the court, which may be held therein for any of the purposes aforesaid.

2a-2

IN WITNESS WHEREOF, the undersigned has hereunto signed his name and affixed his seal, or caused these presents to be executed by a duly authorized officer, and its seal to be hereunto affixed, the day of July 19 72

Signed, sealed and delivered  
in the presence of



(L.S.)

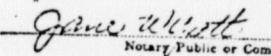
(Corporate Seal)

STATE OF TEXAS  
COUNTY OF TRAVIS

} ss:

INDIVIDUAL

Acknowledged before me this 17th day of July, 19 72

 JANE WYATT  
Notary Public or Commissioner of Deeds

STATE OF  
COUNTY OF

} ss:

PARTNERSHIP

On the day of 19, before me personally came

to me known, who thereupon made solemn oath and acknowledged before me that he is a member of

the partnership in whose behalf he acts and in whose name he executed the foregoing instrument.

Notary Public or Commissioner of Deeds

STATE OF  
COUNTY OF

} ss:

CORPORATION

On the day of 19, before me personally came

to me known, who being by me duly sworn, did depose and say that he resides in that he is a duly authorized officer of the corporation on whose behalf he acts, to wit, the  
the corporation described in and which executed the above instrument, that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

Notary Public or Commissioner of Deeds

No. 71 B 598

In the District Court of the United States  
for the SOUTHERN District of NEW YORK

IN THE MATTER OF

LAW RESEARCH SERVICE, INC.,

Debtor

ARRAIGNMENT PROCEEDINGS

**Proof of Debt and  
Power of Attorney of**

JOHN HERBERT CROOK

(Name)

1110 San Jacinto Boulevard  
(P. O. Address)

Austin, Texas

Amount of Debts, \$25,923.65 with interest

KRISEL, LESSALL, MINTZ & DOWLING  
Attorneys for JOHN HERBERT CROOK  
Office & P.O. Address  
598 Madison Avenue  
New York, N.Y. 10022  
688 6464

ASSIGNMENT made November 28, 1969 by LAW RESEARCH SERVICE, INC., a corporation having its principal place of business at 60 Hudson Street, New York, New York, as Assignor, and JOHN HERBERT CROOK, having an office at 1110 San Jacinto, Austin, Texas, as Assignee.

WHEREAS in or about 1967, Assignor commenced an action in the Supreme Court of the State of New York, County of New York, against Western Union Telegraph Co., R. W. McFall, Charles deBretteville, Harry E. Figge, Jr., William D. Gaillard, Eugene M. Geddes, Leonard H. Goldenson, John S. Hutchins, Clarence H. Linder, W. P. Marshall, T. F. McMains, John F. Rich, Harper Sibler, Jr.. and Louis Yaeger as defendants, under Index No. 20092/1967, asserting a claim and demand for breach of contract against said defendants, in which action a decision was rendered on May 27, 1968 by Supreme Court Justice Irving L. Levey, finding that defendant Western Union Telegraph Co. breached its agreement with Assignor and directing assessment of damages resulting therefrom;

NOW THEREFORE, for value received the Assignor hereby assigns to the Assignee the interest of the Assignor in said claim and demand and any judgment entered or to be entered thereon and the sums of money that may be obtained by

means thereof or as a result of any settlement or compromise of the said claim and demand or judgment to the extent and amount of \$25,923.65, together with interest thereon at the rate of 8% per annum from the date hereof.

The Assignor hereby irrevocably appoints the Assignee its attorney, with power of substitution and revocation, to use all lawful means for the recovery of the amount of \$25,923.65 together with interest thereon at the rate of 8% per annum from the date hereof to the date of payment, due or to become due on said claim and demand or judgment, and upon payment to acknowledge satisfaction or to discharge such judgment to the extent of said sum of \$25,923.65 with interest thereon at the rate of 8% per annum from the date hereof to the date of payment.

The Assignor represents and covenants that it will not collect and receive any part of said claim and demand or judgment nor release or discharge such claim and demand or judgment unless and until payment to the Assignee has been made in the sum of \$25,923.65 with interest thereon at the rate of 8% per annum from the date hereof to the date of payment; and that such claim and demand or judgment to the extent provided is free from liens of attorneys.

IN WITNESS WHEREOF the Assignor has caused these

presents to be signed and acknowledged the day and date  
first above written.

LAW RESEARCH SERVICES, INC.

By /S/ ELLIAS C. HOPPENFELD  
Ellias C. Hoppenfeld, President

(SEAL)

ATTEST:

/S/ PAUL WEINER  
Secretary

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) SS.:

On this 28th day of November, 1968 before me personally came ELLIAS C. HOPPENFELD, to me known, who being by me duly sworn, did depose and say that he is the President of Law Research Services, Inc., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

/S/ PAUL WEINER  
PAUL WEINER, Notary Public  
N.Y. State, State of New York  
Reg. No. 31-537760  
Qualified in New York County  
Term of office: \_\_\_\_\_  
Notary Public

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
(In Bankruptcy)

3a-1

In the Matter  
of  
  
LAW RESEARCH SERVICE, INC.,  
Debtor.

No. 71-B-598

United States Court House  
Foley Square, New York, N.Y.

October 31, 1972, 2:15 P.M.

Before:

HON. ASA S. HERZOG

Referee

ADJOURNED HEARING ON MOTION OBJECTING  
TO CLAIMS. (JOHN HERBERT CROCK)

Appearances:

Messrs. KRAUSE, HIRSCH & GROSS  
Attorneys for Debtor,  
41 East 42nd Street  
New York, New York.  
By: HYMAN GOLD, ESQ., of counsel

BEATRICE R. GOTTLIEB  
Official Court Reporter  
Room 230, United States Courthouse  
Foley Square, New York, N.Y. 10007  
REctor 2-3933

1                   Appearances (continued)

3a-2

2                   Messrs. KRISEL, LESSALL, MINTZ & DOWLING  
3                   Attorneys for John Herbert Crook,  
4                   598 Madison Avenue  
5                   New York, New York  
6                   By: RICHARD L. ARONSTEIN, ESQ., of Counsel

7                   Messrs. LEVIN & WEINTRAB  
8                   Attorneys for Creditors' Committee  
9                   225 Broadway  
10                  New York, New York  
11                  By: MICHAEL J. CRAMES, ESQ., of Counsel.

-----

12                  MR. GOLD: Will your Honor please look at  
13                  the Notice of Motion dated July 26th, 1972 and  
14                  address yourself to Schedule A which has the  
15                  claim of John Herbert Crook, No. 502 in the  
16                  amount of 25 thousand --

17                  THE REFEREE: Let me find it.

18                  MR. ARONSTEIN: Excuse me, your Honor, I  
19                  am not a party to that.

20                  THE REFEREE: I don't see any such motion.

21                  MR. ARONSTEIN: I don't understand it.

22                  THE REFEREE: Just a moment, please.

23                  MR. GOLD: You should have before you a  
24                  Notice of Motion and in the upper right-hand  
25                  corner it says "Notice of Motion to reduce  
claims" --

26                  THE REFEREE: Off the record.

27                  (Discussion off the record).

1

2 THE REFEREE: All right, I have it, July  
3 26th.

4 Now, what do you want me to address myself to?

5 MR. GOLD: Claim No. 502.

6 THE REFEREE: Claim 502, objection to the  
7 claim of John Herbert Crook for \$25,923.65.

8 MR. GOLD: Right.

9 THE REFEREE: Now, counsel, do you want to be  
10 heard?

11 MR. ARONSTEIN: Yes, your Honor.

12 MR. GOLD: Before you hear him, your Honor,  
13 would you also find the Notice of Motion dated  
14 July 19th, 1972 -- take my copy -- and I want  
15 you to look at Schedule B of that motion, and  
16 at the bottom there is the claim of John Herbert  
17 Crook, same amount.

18 THE REFEREE: The same amount but the  
19 objection is different than the one that I  
20 previously looked at, it says the debtor has  
21 already filed an objection to creditor's secured  
22 claim and repeats the same here.

23 MR. GOLD: Right, because he filed another  
24 claim.

25 THE REFEREE: Debtor indicates liability

1

2           in the sum of \$15,500.

3a-4

3           Now, on the earlier one you just handed me  
4           you assert that the claimed lien was not  
5           perfected, that the alleged lien is voidable  
6           under §60 of the Act, and the claim does not  
7           allege any lien under any circumstances and the  
8           assignment by the debtor to the claimant is of  
9           no force and effect.

10          All right, now I have got them both.

11          Schedule B on this earlier one is a lien  
12          claim asserted by creditors who have not filed  
13          claims.

14          All right, I am looking at them.

15          MR. GOLD: Now, Mr. Aronstein has to advise  
16          me whether he will press his claim or withdraw  
17          it, that's all.

18          MR. ARONSTEIN: First, your Honor, may I  
19          state, I do not have that second motion dated  
20          the 20th something of July. I have the motion  
21          of July 19th, 1972. Whether it was mailed to us,  
22          I don't know; it was not received by us.

23          THE REFEREE: I don't honor that statement.  
24          It was mailed to you and there is an affidavit  
25          of mailing and that is sufficient for me.

1  
2                   MR. ARONSTEIN: I didn't say it wasn't         3a-5  
3 mailed. I said it was not received. However,  
4 I don't think it makes any difference.

5                   Now, as I attempted to state before, the  
6 debtor does not have as the result of a direct  
7 promise to pay an obligation to John Herbert Crook  
8 of this nature of \$25,923. However, in the  
9 event --

10                  THE REFEREE: I am not interested in any  
11 events. Have you got a claim now or haven't you?

12                  MR. ARONSTEIN: Your Honor, we have two  
13 claims now, one of which I thought was before  
14 your Honor.

15                  Now, I refer your Honor to a notice of  
16 cross-motion which was returnable July 14th, 1972.  
17 I don't know if that is before your Honor at the  
18 moment.

19                  If I can refresh the Court's recollection:  
20 at that time Western Union moved to compel the  
21 debtor to complete its settlement, to obtain  
22 various stipulations, and to make payment to  
23 Mr. Julien and Mr. Geller and others including  
24 assignees of the amounts which were deposited  
25 in the special account, subject to your Honor's

signature. I think there was a \$450. thousand fund. That was under the stipulation between Western Union and the debtor, a fund to pay attorneys and assignees who held assignments.

3a-

6 THE REFEREE: I know about it; get on  
7 with it.

14 It was my understanding that our cross  
15 motion was on before your Honor today, but  
16 apparently it is not.

I therefore will file papers to bring on  
such a motion to compel the debtor to pay out  
of the sum on deposit for that purpose the  
assigned amount.

21 We do not assert a direct claim for that  
22 amount against the debtor. However, I believe  
23 the debtor will probably interpose objections  
24 to the payment of that sum out of the fund.

25 If the Court should find that the sum

1  
2 should not be paid out of the fund, I believe  
3 we would then have a choate claim against the  
4 debtor for at least \$25,923. for breach of the  
5 warranties.

6           For that reason I do not think I should  
7 withdraw this claim and I believe the objections  
8 to the present filed claim should be held  
9 following your Honor's decision on my motion  
10 which I previously made returnable July 14th.

11           THE REFEREE: Oh, nonsense.

12           Proceed with your objections, Mr. Gold.

13           MR. GOLD: Are you withdrawing it?

14           THE REFEREE: He is not withdrawing it.

15           Proceed.

16           MR. ARONSTEIN: I don't think I should  
17 withdraw it.

18           THE REFEREE: I don't know what you are  
19 talking about.

20           MR. ARONSTEIN: If the Court does not  
21 understand I would like an opportunity to make  
22 it clear.

23           THE REFEREE: I know enough of what you  
24 said. Let's go on with this.

25           MR. GOLD: Your Honor, I offer in evidence

1

2 an agreement between John Herbert Crook and 3a-8  
3 Law Research Service, Inc. and Elias E. Hoppenfeld  
4 dated November 28, 1969.

5 THE REFEREE: Any objection?

6 MR. ARONSTEIN: I supplied that, your Honor,  
7 on behalf of Mr. Crook. Could that be deemed  
8 marked?

9 MR. GOLD: You will get it back.

10 MR. ARONSTEIN: But it is already in  
11 evidence in another Court.

12 MR. GOLD: Can we mark the back?

13 MR. ARONSTEIN: I guess so.

14 THE REFEREE: You are not appearing in  
15 opposition to the motion, are you?

16 MR. CRAMES: Except, your Honor, I have on  
17 behalf of the committee made an order to show  
18 cause which is returnable --

19 THE REFEREE: That has nothing to do with  
20 this motion.

21 MR. CRAMES: It does, your Honor, in the  
22 sense that we are interested in the validity or  
23 invalidity of this secured claim because we are  
24 seeking to preserve liens.

25 THE REFEREE: Mark it.

(Agreement between John Herbert Crook, 3a-9

Law Research Service, Inc. and Elias E.

Hoppenfeld dated November 28, 1969 marked in evidence as Debtor's Exhibit 1).

MR. GOLD: I offer in evidence a document entitled Assignment made November 28, 1969 by Law Research Service, Inc. to John Herbert Crook, and ask that it be marked as Debtor's Exhibit 2 of today's date.

Mr. Aronstein, any objection?

MR. ARONSTEIN: No objection.

THE REFEREE: Mark it.

(Assignment made November 28, 1969 by Law  
Research Service, Inc. to John Herbert Crook  
marked in evidence as Debtor's Exhibit 2).

MR. ARONSTEIN: I also provided that, your Honor.

THE REFEREE: Very well.

MR. GOLD: Mr. Aronstein, will you concede for the record that the sum of \$25,923.65 mentioned in both Debtor's Exhibits 1 and 2 were not paid by Law Research Service, Inc. to your client?

MR. ARONSTEIN: That was paid by no one to

1  
2 my client, Mr. Gold.

3 MR. GOLD: I am asking for a concession.

4 THE REFEREE: If that was paid by no one  
5 it means it was not paid by the debtor either.

6 MR. GOLD: Your Honor, I want to call your  
7 attention -- I want you to read paragraph 2 of  
8 Debtor's Exhibit 1 (handing same to Referee).

9 Debtor's Exhibit 2 is the assignment which  
10 was given pursuant to Debtor's Exhibit 1 (handing  
11 same to Referee).

12 MR. GOLD: Mr. Aronstein, will you also  
13 concede at this time that a copy of the assignment  
14 was not filed in the office of the County Clerk  
15 of the County of New York?

16 MR. ARONSTEIN: Mr. Gold, I cannot concede  
17 that at this time. It was submitted for filing.  
18 I cannot state personally that I know it was not  
19 filed.

20 MR. GOLD: Mr. Aronstein, will you take the  
21 witness stand, please?

22 RICHARD L. ARONSTEIN, of 180  
23 Park Row, New York, New York, called as a witness  
24 on behalf of the debtor, having been first duly  
25 sworn by the Referee testified as follows:

1 Aronstein - direct

3a-11

2 DIRECT EXAMINATION BY MR. GOLD:

3 Q Mr. Aronstein, you are an attorney duly  
4 admitted to practice in the State of New York?

5 A I am.

6 Q How long have you been practicing here?

7 A Something over twenty years.

8 Q Are you the attorney for John Herbert Crook?

9 A I am a member and associated with the firm of  
10 attorneys for John Herbert Crook.

11 Q Were you acting in his behalf in connection  
12 with the negotiation of an agreement which has been  
13 marked as Debtor's Exhibit 1?

14 A I cannot answer that equivocally or unequivocally  
15 yes or no.

16 Q Did you have --

17 A I can clarify it.

18 Q Did you have Mr. Weiner <sup>of</sup> your office  
19 execute Debtor's Exhibit 1? ✓

20 A Yes, I did.

21 Q And in so doing did you act on behalf of  
22 John Herbert Crook?

23 A Yes, I did.

24 Q Did you make an effort to record in the  
25 County Clerk's office of the County of New York a copy

1 Aronstein - direct

3a-12

2 of the assignment which is Debtor's Exhibit 2?

3 A Yes, I did.

4 Q Did you file the same?

5 A I submitted it by mail for filing to the County  
6 Clerk's office of the County of New York.

7 Q Was it returned to you?

8 A No, it was not returned to me.

9 Q Do you know whether in fact you filed it?

10 A I do not know whether in fact I filed it.

11 I submitted it for filing by mail to the County Clerk  
12 of the County of New York.

13 Q So you do not know whether you complied with  
14 Section 5019, subd. --

15 THE REFEREE: That is not going to be  
16 good enough.

17 MR. GOLD: I am going to show it to you.

18 THE REFEREE: I mean it will not be good  
19 enough, the fact that he does not know. You  
20 will have to have someone here --

21 MR. GOLD: If he wants to assert a lien  
22 he will have to prove his lien.

23 THE REFEREE: His testimony is that he  
24 mailed it there, and now you will have to rebut  
25 the fact that they received it or that they

recorded it there, by somebody who searched the records and says it was not filed.

MR. GOLD: Then I will have to ask for a continuation.

BY MR. GOLD:

Q Will you be good enough to examine Section 5019, subd. C --

A In my capacity as an attorney, may I ask whether we are continuing?

THE REFEREE: We will decide that when we get through.

Q Will you look at that Section and tell me whether you acting on behalf of your client complied with that section and filed a copy of the assignment which is marked Debtor's Exhibit 2 of today's date?

A I cannot state a conclusion to the effect that I filed it. What I did was enclose this in a properly addressed post-paid envelope with a written request that it be filed, and addressed it to the County Clerk of the County of New York, and --

Q And your answer is that --

A I object to the question as it calls for a conclusion.

MR. GOLD: We will have to get a copy of

1 Aronstein - direct

3a-14

2 the docket.

3 THE REFEREE: Or a Xerox copy, or authenti-  
4 cated, or something of that nature.

5 So far all I have is testimony that he  
6 put it in the mail in a properly addressed  
7 envelope, addressed to the County Clerk, and  
8 I assume it had a return address on it.

9 THE WITNESS: That's right, your Honor.

10 THE REFEREE: And counsel said he did not  
11 receive it returned in the mail. At the moment  
12 the presumption is that it was received by the  
13 County Clerk.

14 MR. GOLD: I will ask for a continuance.  
15 I have no further questions of this  
16 witness.

17 THE REFEREE: You may step down.  
18 (Witness excused).

19 THE REFEREE: Are you going to adjourn now?

20 MR. GOLD: No, Let me get rid of my  
21 witnesses and just leave that open, that one  
22 thing.

23 THE REFEREE: Just that one thing.

24 MR. GOLD: Yes, and I will send him a copy.

25 THE REFEREE: All right.

1 Wiener - direct

3a-45

2 P A U L W I E N E R, residing at 1156 East 103d

3 Street, Brooklyn, New York, called as a witness  
4 by the Debtor, having been first duly sworn by  
5 the Referee, testified as follows:

6 DIRECT EXAMINATION BY MR. GOLD:

7 Q Mr. Wiener, are you now connected with  
8 Law Research Service, Inc., the debtor?

9 A No, sir.

10 Q Were you ever connected with that company?

11 A Yes, sir.

12 Q When?

13 A I was an officer and director of the company from  
14 1965 through March 31st, 1970.

15 Q Do you know Mr. Aronstein, the gentleman  
16 sitting to my right?

17 A Yes.

18 Q Did you ever meet him before?

19 A Yes.

20 Q Did you ever meet him in his office?

21 A Yes.

22 Q And did you have conversations with him  
23 relative to Debtor's Exhibit 1 of today's date?

24 A I don't know what Debtor's Exhibit No. 1 is,  
25 Mr. Gold.

1 Wiener - direct

3a-16

2 Q That's a good answer.

3 Will you please look at Debtor's Exhibit 1  
4 of today's date and tell me whether you had any  
5 occasion to discuss it with him?

6 A (Witness examines same). Yes.

7 Q Will you tell the Court when it was, what  
8 you said to him and what he said to you?

9 A On November 23th, 1970 -- excuse me, 1969 --  
10 Mr. Hoppenfeld and I proceeded to Mr. Aronstein's  
11 offices which I believe are located somewhere in the  
12 sixties on Madison Avenue, for the purpose of consummat-  
13 ing a settlement agreement in relation to an action  
14 relating to a Mr. Herbert Crook of Texas, who was a  
15 franchisee of Law Research Service, and had instituted  
16 an action against the company for alleged breach of  
17 contract and certain other allegations.

18 On arrival at Mr. Aronstein's office, he had  
19 been in consultation, and in fact was in consultation  
20 over the phone with a Mr. Hearne or Mr. Crook relative  
21 to the settlement of the proceedings and the complete  
22 cutting off of Mr. Crook as a franchisee, and any  
23 other matters relating to his franchise contract.

24 There was an original draft of a settlement  
25 agreement that was presented to Mr. Hoppenfeld and  
myself.

1 Wiener - direct

13a-17

2 I read it through and I objected to the wording  
3 that was originally stated in there, as inasmuch to me  
4 as a layman it did not appear to state that it was in  
5 full settlement of the claims asserted by Mr. Crook.

6 At that time Mr. Aronstein stated that he did  
7 not think it was necessary, but to satisfy me as a  
8 layman he would then change the writing so that I  
9 would be satisfied.

10 I don't recall the exact wordings that were  
11 changed but I know there were some words put in to  
12 the effect that this was a settlement of the contractual  
13 dispute between Mr. Crook and Law Research Service,  
14 and it was to pay Mr. Crook the original franchise fee  
15 plus some alleged costs that he had incurred in trying  
16 to operate his franchise.

17 THE REFEREE: Was that 25 thousand plus  
18 at least?

19 THE WITNESS: Yes, your Honor.

20 THE REFEREE: That was \$15,500 that he had  
21 paid to Law Research plus some other expenses  
22 he had amounting to \$10,423.

23 THE WITNESS: Yes, your Honor.

24 THE REFEREE: And that made up the  
25 \$25. thousand.

cross  
Wiener - direct

3a-18

1                   THE WITNESS: Yes, your Honor.

2                   THE REFEREE: And he was to get that in  
3                   satisfaction of his claim against Law Research?

4                   THE WITNESS: That is correct; in addition  
5                   to which there was a proceeding, I believe in  
6                   Travis County, Texas, that was scheduled on  
7                   for sometime in the very near future, and it  
8                   was determined that this was to be adjourned --  
9                   I don't know if that is the proper word --  
10                  adjourned immediately in order for that action  
11                  not to continue pending this settlement.

12                  MR. GOLD: Your Honor, I have no further  
13                  questions of the witness.

14                  CROSS EXAMINATION BY MR. ARONSTEIN:

15                  Q         Mr. Wiener, did you examine Debtor's  
16                  Exhibit 1 and Debtor's Exhibit 2?

17                  A         I have only seen 1, Mr. Aronstein.

18                  Q         This may be the other. I show you some-  
19                  thing called Debtor's Exhibit 2 in evidence (handing  
20                  same to witness).

21                  A         (Witness examines same). Yes.

22                  Q         That answer yes is to which question?

23                  A         To the question have I seen both 1 and 2.

24                  Q         Were you present when that was signed at

1 Wiener - cross

2 that time?

3a-19

3 A Yes; in fact my signature appears on the last page  
4 as the secretary of the corporation.

5 Q And is that the instrument that was in fact  
6 signed at that time?

7 A Well, this is one of the instruments that was  
8 signed.

9 MR. ARONSTEIN: Excuse me, your Honor,  
10 may I show Debtor's Exhibit 1 to the  
11 witness?

12 THE REFEREE: Yes.

13 Q I show you Debtor's Exhibit 1 and ask you  
14 the same question concerning Debtor's Exhibit 1.

15 A (Witness examines same).

16 MR. GOLD: What was the question?

17 Q Is that the instrument that was signed, and  
18 is your signature on the instrument?

19 THE REFEREE: I want to see that Statute  
20 again, please.

21 A Yes, I have signed both of these.

22 Q Were those papers delivered to me at that  
23 time, on the date you mentioned, November 28, 1969?

24 A Yes.

25 Q For Mr. Crook?

1 Wiener - direct

2 A They were left with you, as I recall, and we 3a-20  
3 received one copy or perhaps two -- I don't recall how  
4 many.

5 Q Of each?

6 A Of each, yes, each exhibit.

7 Q When you say one copy --

8 A One of each, yes.

9 Q And did you also sign and deliver a  
10 certificate of resolution and certification, which I  
11 will hand to you in a moment?

12 A (Witness examines same). Yes.

13 Q And you affixed your signature to that paper  
14 I just handed you, and to Exhibits 1 and 2 by direction  
15 of the Board of Directors of Law Research Service, Inc.,  
16 is that correct?

17 A That is correct.

18 MR. ARONSTEIN: I ask, your Honor, that  
19 this paper consisting of two pages be marked  
20 as Creditor's Exhibit A in evidence.

21 MR. GOLD: I have no objection.

22 THE REFEREE: Mark it.

23 (Certificate of resolution, etc. referred  
24 to marked in evidence as Creditor's Exhibit A).

25 Q Mr. Wiener, you testified to your recollection

1 Wiener - cross

2 of a meeting at my office on November 28th, 1969 at 3a-21  
3 which you stated that the delivery of these papers,  
4 Debtor's Exhibits 1 and 2, the assignment and the  
5 agreement was a contractual settlement of the dispute  
6 between Mr. Crook and Law Research Service, Inc.;  
7 do you recall testifying to that effect?

8 A Why, I said it was a settlement of a dispute  
9 relating to the contract.

10 THE REFEREE: I didn't hear him say  
11 contractual settlement.

12 MR. ARONSTEIN: I jotted it down.

13 THE REFEREE: Maybe he did. I just said  
14 I don't recollect him using the word.

15 MR. ARONSTEIN: I will accept his recollec-  
16 tion, your Honor.

17 Q Do you recall whether there were any  
18 conditions to that settlement contained in the instruments  
19 I referred to without looking at them for the moment --  
20 from your recollection?

21 MR. GOLD: Your Honor, I object. The  
22 documents are in evidence and they speak for  
23 themselves.

24 THE REFEREE: Sustained.

25 MR. ARONSTEIN: Then, if your Honor please,

1 Wiener - cross

3a-22

2 I move to strike the testimony of Mr. Wiener  
3 in relation to what was contained, and whether  
4 there was a settlement of the dispute between  
5 the parties, all of those matters embodied in  
6 the exhibits in evidence.

7 THE REFEREE: You were delayed in your  
8 motion.

9 Denied.

10 MR. ARONSTEIN: Your Honor, I didn't think  
11 we were playing the game of objections to  
12 evidence.

13 THE REFEREE: Now you have learned that  
14 this is a Court of Law and we proceed according  
15 to the rules.

16 MR. ARONSTEIN: All right, sir.

17 THE REFEREE: I don't know what you thought  
18 this was.

19 MR. ARONSTEIN: A search for the truth,  
20 your Honor.

21 THE REFEREE: That is what a Court of Law  
22 is and that's why it has rules of evidence.

23 MR. ARONSTEIN: I have no further questions  
24 of Mr. Wiener.

25 THE REFEREE: You may step down.

1  
2 (Witness excused).

3 MR. GOLD: I have no further witnesses.

4 THE REFEREE: I want to know what your  
5 theory is.

6 MR. GOLD: I have two theories --

7 THE REFEREE: First of all they did enter  
8 into a contract to settle their differences for  
9 \$25. thousand.

10 MR. GOLD: Correct.

11 THE REFEREE: Is there conceded a liability  
12 of \$25. thousand?

13 MR. GOLD: No, and even he doesn't take the  
14 position -- the position he takes, and he is  
15 right; we never agreed to pay his client  
16 \$25. thousand. He admits it.

17 THE REFEREE: You agreed to assign him  
18 \$25. thousand.

19 MR. GOLD: Assign him -- now if we agreed  
20 to assign it to him, and that is the Section I am  
21 calling your attention to, which says that if  
22 you have a right to enforce a portion of a  
23 judgment then you have to file it in the County  
24 Clerk's Office. That is only one argument.

25 My second argument is, and I call your

1

2 attention to paragraph 2 -- I don't know if you  
3 have it in front of you. In paragraph 2 of the  
4 agreement --

5 THE REFEREE: If the assignment wasn't paid  
6 before that date it was not enforceable.

7 MR. GOLD: That's right.

8 MR. ARONSTEIN: Would your Honor refer to  
9 paragraph 2 --

10 THE REFEREE: That is what I am going to do.

11 It says that the plaintiff will adjourn  
12 this action in Texas to May 31st at which time  
13 if the aforesaid assignment has not been paid  
14 in full the plaintiff may proceed to trial of  
15 the suit against the defendant in the Texas  
16 Court on the merits, as if this agreement had  
17 not been executed.

18 MR. ARONSTEIN: That's right, the right of  
19 the plaintiff in the Texas action to proceed to  
20 trial without restriction, whereas in the  
21 earlier portion of the agreement, restricted  
22 himself not to proceed to trial until after  
23 May 31st.

24 Now, that in of itself, your Honor, is  
25 not an abrogation of the assignment.

1

2 THE REFEREE: I agree with you.

3 It does not say that the assignment shall be  
4 null and void -- and these are pretty capable  
5 lawyers. If that is what they would have meant  
6 that is what they would have said.

7 All it says here that if it has not been  
8 paid before the adjourned date which is May 31st,  
9 they may proceed with the suit down there as if  
10 the assignment had not taken place. That's all  
11 it says, and I sustain his position on it  
12 completely.

13 Now, don't pursue that point any further.

14 What remains to you now?

15 MR. GOLD: What remains is my searching  
16 the records in the Supreme Court.

17 THE REFEREE: To see whether it was filed.

18 MR. GOLD: To see whether it was filed,  
19 and if it was filed I as an officer of this  
20 Court will furnish you with information that  
21 it was filed.

22 THE REFEREE: We will have to have testimony  
23 on that.

24 MR. GOLD: I will get a certificate and I  
25 will mark it into the record.

1

2 MR. ARONSTEIN: Now, if your Honor please,  
3 the right of Mr. Crook to a portion of the claim  
4 that Law Research at that time had against  
5 Western Union came into existence on November  
6 28th, 1969. I think that is conceded.

7 In addition to the right to the portion of  
8 the chose in action that Law Research Service  
9 had against Western Union, Law Research also  
10 agreed that the creditor, the sssignee, should  
11 receive the proceeds flowing from that chose in  
12 action which was anticipated to be a formal  
13 judgment.

14 However, the transfer of Law Research  
15 Service rights against Western Union took place  
16 on November 28, 1969.

17 THE REFEREE: What took place?

18 MR. ARONSTEIN: The transfer,sir. This is  
19 a transfer. This is not a security granted to  
20 Mr. Crook. This is an outright, unconditional --  
21 from the viewpoint of the assignment --

22 THE REFEREE: It is an assignment.

23 MR. ARONSTEIN: That's right.

24 THE REFEREE: It is an assignment of a  
25 part of --

1

2 MR. ARONSTEIN: Of a claim, your Honor,  
3 not a judgment first but a claim first.

4 THE REFEREE: A claim and demand against  
5 Western Union.

6 MR. ARONSTEIN: Right. This is the  
7 assignment itself (handing same to the Referee)  
8 that I received --

9 THE REFEREE: Wait a moment, please.  
10 (examines same).

11 At the moment I agree with your analysis.  
12 Law Research asserted a claim against Western  
13 Union upon which it instituted suit. That was  
14 the WHEREAS clause.

15 Now they assigned the interest of Law  
16 Research in and to the claim and any judgment  
17 that may result therefrom to the extent of  
18 \$25. thousand.

19 So far I follow you.

20 Now, what is next?

21 MR. ARONSTEIN: Our position is then that  
22 the transfer as described in the Bankruptcy Act --

23 THE REFEREE: The assignment of the  
24 interest to the claim --

25 MR. ARONSTEIN: Took place on November 28,

1

2 1969, more than a year and a half prior to the  
3 filing of the petition here.

4 At that time, your Honor, and I believe  
5 that Mr. Gold's thoughts and his subsequent  
6 search in the County Clerk's Office is pointed  
7 to the question of perfection.

8 THE REFEREE: Let's assume for the moment,  
9 for the sake of argument, you did not perfect it  
10 and you have no lien against the judgment,  
11 what have you got left?

12 MR. ARONSTEIN: Wait a minute, your Honor.

13 We took the assignment not as security, not  
14 conditionally; we took it not as a security  
15 interest on November 28th, 1969 for present  
16 consideration.

17 Now, Section 60 is the Section under which  
18 the debtor seeks to avoid its obligation to pay  
19 out of the fund on deposit with the Court this  
20 sum of \$25. thousand plus interest.

21 We took at that time a claim, a right; we  
22 did not take a judgment because no judgment  
23 came into existence until June 1970 --

24 MR. GOLD: June 20th.

25 THE REFEREE: In November 1969 they

1

2 transferred to you an interest in their claim.

3 MR. ARONSTEIN: Right. Now, the question,  
4 I believe, that the Court must take up is  
5 whether at that time the transfer became  
6 perfected or whether we have to look to a later  
7 date to find out whether the transfer became  
8 perfected.

9 Now, in the first instance I submit there  
10 was no transfer --

11 THE REFEREE: How do you perfect a transfer  
12 of a claim except by delivery or possession --

13 MR. ARONSTEIN: Now, your Honor, I submit  
14 that by specific law of New York, which I believe  
15 is applicable because all these proceedings took  
16 place in New York -- and I think that is agreed  
17 and understood -- there is and was at that time  
18 only one section, or one provision, or one body  
19 of law, that is the Uniform Commercial Code,  
20 covering security interests or interests to be  
21 perfected.

22 Now, under the Uniform Commercial Code --

23 THE REFEREE: I am not talking about an  
24 interest to be perfected. I am talking about  
25 a transfer.

1

2           What did they do? They assigned to you  
3           on that date an interest in a claim. I don't  
4           think you ever have to perfect that.

5           MR. ARONSTEIN: I think you do, your Honor.  
6           I think you do for this reason:

7           You do by giving notice thereof to the  
8           party charged, to the obligor of that claim,  
9           in this case Western Union. I believe that you  
10          have an absolute obligation to do so, to give  
11          notice to the obligor.

12          THE REFEREE: And if you don't do it?

13          MR. ARONSTEIN: Then the obligor is free  
14          to transfer that asset any place it will.

15          THE REFEREE: So you did give notice.

16          MR. ARONSTEIN: Yes, and I can put that  
17          in evidence.

18          THE REFEREE: You did give notice?

19          MR. ARONSTEIN: I did give notice, your  
20          Honor, and not only that but it is admitted by  
21          the debtor in documents before the Court, on  
22          file in this Court, contained in affidavits  
23          and sworn pleadings in the Supreme Court of the  
24          State of New York, briefs submitted by their  
25          counsel of record in the Appellate Division of

1

2 the Supreme Court of the State of New York,  
3 conceded consistently and accepted that not only  
4 was the assignment made on November 28th, 1969  
5 but that notice was given in fact to Western Union  
6 Telegraph Co., the obligor.

7 THE REFEREE: Maybe they will concede that.

8 Do you concede that, Mr. Gold?

9 MR. ARONSTEIN: A statement made in the  
10 plaintiff-appellant's brief, in the Supreme Court,  
11 Appellate Division, First Department, in an action  
12 entitled "Law Research Service, Inc. against  
13 Mr. Crook and others", and the plaintiff-  
14 appellant is Law Research Service, Inc., the  
15 debtor and debtor-in-possession here.

16 At page 3 of this main plaintiff-appellant's  
17 brief the following statement is made, and I  
18 checked this, your Honor, and submit this is in  
19 the nature of a judicial admission --

20 THE REFEREE: Go ahead and read it to me.

21 MR. ARONSTEIN: Subsequent to the judgment,  
22 and in or about July 1970 the defendants Crook  
23 and Hearne's attorneys of New York filed the  
24 assignment provided for under the settlement  
25 agreement entitling Crook to the sum of \$25,923.65

1  
2 out of the avail of L.R.S. (that is Law Research  
3 Service) recovered against Western Union.

4 "The defendants filed the assignment not  
5 only with Western Union but with the County  
6 Clerk of New York County and all the appropriate  
7 parties."

8 Now, your Honor, I submit that is an  
9 admission -- I think the dates are inaccurate  
10 because the filing of Western Union did not take  
11 place in July, 1970, but it took place in  
12 December, 1969, your Honor, and I have an  
13 affidavit of service. There is acknowledgment,  
14 as I say, throughout the papers, but the date can  
15 be fixed by the December 9, 1969 date.  
16 Service upon the party described as managing agent  
17 of Western Union Telegraph Co. at 60 Hudson  
18 Street, New York, N.Y.

19 This has since been acknowledged in affidavits  
20 by Western Union before your Honor.

21 THE REFEREE: Will you stop for a moment  
22 so that I can see if there is a concession?

23 MR. GOLD: Yes, your Honor, we will concede  
24 as we must, in view of the record, that notice  
25 was given to Western Union by the claimant.

1  
2           THE REFEREE: All right, before the money  
3           was paid out.

4           MR. GOLD: Yes.

5           THE REFEREE: All right, let's go on from  
6           there.

7           Now, we have an assignment of a claim;  
8           we have notification against whom the claim  
9           exists. Now, what?

10          MR. ARONSTEIN: There is no other provision  
11          in New York law -- there was no other provision  
12          in New York law in December, 1969, November and  
13          December, 1969, for any further requirements to  
14          perfect that assignment.

15          Now, there is a separate and distinct  
16          provision which relates to a judgment, which  
17          provides a means of notifying, or rather --

18          THE REFEREE: Docketing --

19          MR. ARONSTEIN: A change in the ownership  
20          is how it is described.

21          THE REFEREE: That is your position.

22          MR. ARONSTEIN: The position, therefore,  
23          is that --

24          THE REFEREE: That you have a direct  
25          claim of \$25. thousand against the fund.

1  
2           MR. ARONSTEIN: Against the fund arising  
3         on or about November 28, 1969 and December 9, 1969.

4           THE REFEREE: I have your point.

5           MR. ARONSTEIN: Further, and I think I will  
6         put this in evidence if your Honor will accept it.

7           THE REFEREE: What is that?

8           MR. ARONSTEIN: Judicial admissions by --

9           THE REFEREE: He has conceded it.

10          What else do you need?

11          MR. ARONSTEIN: He conceded the conclusion  
12         that this amount was due and payable and that  
13         is why I would prefer to offer into evidence  
14         the documentary conclusions --

15          THE REFEREE: In his brief, in his statement --

16          MR. ARONSTEIN: In his brief, in his  
17         pleadings and in his affidavits.

18          THE REFEREE: That there are statements  
19         that the amount is due and payable.

20          MR. ARONSTEIN: That's right.

21          Now, the debtor has assigned a different  
22         consequence to the effect of the payment but  
23         that is before the District Court, as one of  
24         the defenses in the proceeding to determine  
25         dischargeability of the over-all claim. But the

1

2 debtor has conceded factually and legally, I  
3 believe, and I would like to offer that in  
4 evidence, the due validity and payability of the  
5 amount in question, with interest.

6

7 MR. GOLD: Your Honor, I don't want counsel  
8 to state to you what we concede and what we  
9 agree.

10

11 THE REFEREE: He is stating what is said  
12 in the papers.

13

14 MR. GOLD: He is offering this in evidence.

15

16 THE REFEREE: Go ahead. If you want to  
17 put him to it, we will do it.

18

19 MR. ARONSTEIN: If your Honor please, I  
20 first offer in evidence a paper entitled  
21 "Plaintiff-Appellant's Brief", the plaintiff-  
22 appellant being Law Research Service, which was  
23 filed in the New York Supreme Court, Appellate  
24 Division, First Department in or about 1971

25

THE REFEREE: Do you concede --

26

MR. GOLD: I never saw it before.

27

THE REFEREE: Look at it.

28

MR. GOLD: It will not tell me any more.

29

30 THE REFEREE: Mr. Hoppenfeld will recognize  
31 it. I am sure this man didn't go out and print

1

2 a brief for the purpose of deceiving the Court.

3

MR. GOLD: I have no objection.

4

THE REFEREE: Mark it Creditor's Exhibit B.

5

(Brief referred to marked in evidence as  
6 Creditor's Exhibit B).

7

THE REFEREE: May I see it?

8

(Exhibit B handed to the Referee).

9

THE REFEREE: What page?

10

MR. ARONSTEIN: Page 3 is one of the  
11 references I called to your Honor's attention.

12

THE REFEREE: Let the record indicate that  
13 it is stated in Exhibit B that in or about  
14 July, 1970 the defendants, Crook and Hearne's  
15 attorneys in New York filed the assignment  
16 provided for under this statement agreement which  
17 entitled Crook to the sum of \$25,923.65 out of  
18 the avails of LRS's recovery against Western  
19 Union.

20

THE REFEREE: Very well; what else?

21

MR. ARONSTEIN: I also offer into evidence  
22 the affidavit of Elias C. Hoppenfeld as  
23 president of Law Research Service, Inc. sworn  
24 to purportedly the 11th day of January, 1971,  
25 and the affidavit of Mr. Paul Wiener as secretary

1  
2       of Law Research Service, Inc. purportedly sworn  
3       to the 7th day of December, 1970.

4           THE REFEREE: You don't have to use the  
5       word "purportedly".

6           MR. ARONSTEIN: If your Honor please, I  
7       withdraw the offer as to Mr. Wiener's affidavit  
8       and offer instead the affidavit referred to of  
9       Mr. Hoppenfeld.

10          MR. GOLD: Your Honor, wouldn't it be  
11       simpler if you got into the record the parts  
12       referred to rather than putting into evidence --

13          MR. ARONSTEIN: No.

14          MR. GOLD: He is offering an affidavit;  
15       what is the relevancy of it?

16          THE REFEREE: Point out the sections you  
17       want him to look at.

18          MR. ARONSTEIN: The first reference in the  
19       affidavit of Mr. Hoppenfeld is --

20          THE REFEREE: What page?

21          [ MR. ARONSTEIN: Page 2, paragraph 7 of the  
22       affidavit of Mr. Hoppenfeld which says: "This  
23       action is based on settlement agreement entered  
24       into between the parties here in New York City,  
25       the parties being Law Research Service, Inc. and

Western Union Telegraph Company, --

THE REFEREE: You don't have to name them all.

4 MR. ARONSTEIN: It has Mr. Crook's name too,  
5 last but not least.

6 "The parties here in New York City (continuing  
7 paragraph 7) on November 29, 1969 and by Richard  
8 L. Aronstein, Esq. on behalf of Douglas D. Hearne  
9 and John Herbert Crook."

The full substance of this matter is set  
forth in the annexed affidavit marked Exhibit 1  
which is the affidavit of Paul Wiener, Elias C.  
Hoppenfeld and Law Research Service, Inc.  
submitted on the prior motion before Judge Chimer.  
This is an incorporation by reference, your Honor.

16 THE REFEREE: Just tell me what is it you  
17 want before me? Do you want me to sit and read  
18 that whole affidavit?

19 MR. ARONSTEIN: No, your Honor.

20 THE REFEREE: What do you want me to  
21 look at?

22 MR. ARONSTEIN: Because they incorporated  
23 it by reference I have to search the records.

24 THE REFEREE: What are they incorporating  
25 by reference, the whole affidavit?

1                   MR. ARONSTEIN: Several affidavits.

2  
3                   THE REFEREE: What in the affidavit is  
4                   incorporated by reference that you want me to  
5                   look at? You should have had that all marked  
6                   out for me.

7                   MR. ARONSTEIN: In the affidavit described  
8                   as affidavit of Paul Wiener, paragraph 6, in  
9                   part (page 2 of the Wiener affidavit) as follows:

10                  "Your deponent, Mr. Hoppenfeld, president  
11                  of LRS went to Mr. Aronstein's office on the  
12                  28th day of November, 1969 to finalize the  
13                  settlement of Mr. Crook's claim. Mr. Aronstein  
14                  drew a settlement agreement and an assignment  
15                  which he presented to me and Mr. Hoppenfeld." ]

16                  Further, in an affidavit described as the  
17                  affidavit of Elias C. Hoppenfeld, consisting  
18                  of two pages, dated December 7th, 1970 --  
19                  no, I withdraw that -- the portion mentioned,  
20                  your Honor, I offer that into evidence.

21                  THE REFEREE: What does it say?

22                  MR. GOLD: I object to it. There is  
23                  nothing --

24                  THE REFEREE: What did it say?

25                  MR. ARONSTEIN: He said that the assignment --

1           -- this is taken together -- this is the  
2       offer on the concession --in the Supreme Court,  
3       your Honor, and it said that the debtor conceded  
4       the validity of the assignment and urged that  
5       there was a settlement.

6           THE REFEREE: Where does it show that?

7           MR. ARONSTEIN: I will withdraw my offer  
8       of that last document. It is not as clear as  
9       the other affidavits.

10          I am making an offer, your Honor, of an  
11       affidavit of Paul Wiener dated October 22nd, 1970  
12       beginning on page 2 thereof, the following  
13       language:

14          "On November 28th, 1960 a settlement  
15       agreement was entered into between LRS and  
16       John Herbert Crook through the firm of Krisel,  
17       Lessall, Mintz & Rosen by Richard L. Aronstein,  
18       Esq. at 598 Madison Avenue, New York, N.Y.  
19       which is annexed hereto as Exhibit 2."

20          "The settlement agreement provided that  
21       upon certain conditions the matter between  
22       John Herbert Crook and LRS was settled, and  
23       that the action would be discontinued upon  
24       payment of the settlement amount of \$25,923.65.

25       The amount of \$25,923.65 as represented by

2 John Herbert Crook consisted of \$15,500 for the  
3 franchisee fee and \$10,425.65 expended by in  
4 reliance upon the franchise contract." 7

5 This document was a filed document in the  
6 Supreme Court, your Honor, of the State of New  
7 York.

8 MR. GOLD: Your Honor, I have no objection  
9 to the part read by Mr. Aronstein, if it is  
10 deemed part of the record. There is no point in  
11 putting this whole document into the record,  
12 some 25 pages.

13 THE REFEREE: The portion read will be  
14 deemed marked in evidence.

15 MR. ARONSTEIN: Would your Honor please,  
16 since it will not be transcribed into the  
17 transcript mark this as an exhibit?

18 THE REFEREE: Why won't it be transcribed?  
19 You read it into the record.

20 MR. ARONSTEIN: I am talking about the  
21 balance of it.

22 THE REFEREE: Why should the balance of it  
23 go into evidence?

24 MR. ARONSTEIN: Because there is reference  
25 to an attached exhibit. I don't want a question

under the rules of this Court to later be raised that I failed to connect up. There are exhibits referred to in the affidavit I just read into the record. Those exhibits I would rather not read into the record. I would rather have them marked.

THE REFEREE: What exhibits?

MR. ARONSTEIN: In connection with the evidence.

THE REFEREE: What exhibits?

MR. ARONSTEIN: In the portion read there is a reference to the following portion and says "see Exhibit 2"; that is Exhibit 2 to that affidavit.

Exhibit 2 appears to be the agreement made between Mr. Crook and Law Research Service November 28th, 1969 which was marked as Debtor's Exhibit 1.

Mr. Gold, do you agree --

MR. GOLD: It is already in evidence.

THE REFEREE: Why do you want to mark it?

MR. ARONSTEIN: Because it is not the original, your Honor. The one that is called Exhibit 2 here is not in fact an original.

1

2                   Mr. Gold, do you agree that that is a true  
3                   copy of the Debtor's exhibit here?

4                   THE REFEREE: What are you trying to  
5                   establish?

6                   MR. ARONSTEIN: The extent of the admissions  
7                   by the debtor of the validity and due payability  
8                   of the assigned claim, your Honor.

9                   MR. GOLD: Your Honor, I had marked in  
10                  evidence as our exhibit the document that he  
11                  is now --

12                  THE REFEREE: I know it.

13                  MR. ARONSTEIN: I have no further evidence  
14                  at this time, your Honor.

15                  MR. GOLD: Your Honor, would you take  
16                  judicial notice of the fact that on June 20th,  
17                  1970 a judgment was entered in the Supreme  
18                  Court of the State of New York, County of New  
19                  York by Law Research Service, Inc. vs. Western  
20                  Union, being for a sum of about \$1,400,000.

21                  THE REFEREE: Yes.

22                  MR. GOLD: And subject, your Honor, to my  
23                  making an investigation and submitting  
24                  documentary --

25                  THE REFEREE: I will have to adjourn this.

1  
2           MR. GOLD: You will have to adjourn this  
3           for just five minutes at most --  
4

5           THE REFEREE: Then I will take your  
6           memorandums from you after that.  
7

8           MR. GOLD: After that, yes.  
9

10          THE REFEREE: How long will you need,  
11          Mr. Gold?  
12

13          MR. GOLD: Give me one week; it will only  
14          be five minutes of time.  
15

16          THE REFEREE: Off the record.  
17          (Discussion off the record).  
18

19          THE REFEREE: November 6th at 10 o'clock.  
20

21          -----  
22

23          (Adjourned to November 6th, 1972, at 10:00 A.M.).  
24

25

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
(In Bankruptcy)

In the Matter

of

LAW RESEARCH SERVICE, INC.,  
Debtor.

71-B-598

No.

United States Court House  
Foley Square, New York, N.Y.  
November 6, 1972, 10:30 A.M.

Before:

HON. ASA S. HERZOG

Referee

ADJOURNED HEARING ON MOTION OBJECTING  
TO CLAIMS (JOHN HERBERT CROOK).

Appearances:

Messrs. KRAUSE, HIRSCH & GROSS  
Attorneys for Debtor  
41 East 42nd Street  
New York, New York  
By: HYMAN GOLD, ESQ., of counsel

{ BEATRICE R. GOTTLIEB  
Official Court Reporter  
Room 230, United States Courthouse  
Foley Square, New York, N.Y. 10007  
REector 2-3933

1           Appearances (continued)

3a-46

2           Messrs. KRISEL, LESSALL, MINTZ & DOWLING  
3           Attorneys for John Herbert Crook  
4           598 Madison Avenue  
5           New York, New York  
6           By: RICHARD L. ARONSTEIN, ESQ., of counsel

7           Messrs. LEVIN & WEINTRAUB  
8           Attorneys for Creditors' Committee  
9           225 Broadway  
10          New York, New York  
11          By: MICHAEL J. CRAMES, ESQ., of counsel.

12         Also present:  
13         ELLIAS C. HOPPENFELD, ESQ.  
14         President of Debtor.

15           - - - -

16          MR. GOLD: Will your Honor take up first  
17          the matter of the objections to the claim of  
18          John Herbert Crook?

19          THE REFEREE: Didn't we try that?

20          MR. GOLD: Yes. You carried it over for  
21          one purpose only, that we obtain from the County  
22          Clerk a certification as to whether Crook has  
23          filed with the County Clerk an assignment of the  
24          judgment to him.

25          I would like to offer in evidence a  
certification from the County Clerk.

26          THE REFEREE: To what effect?

27          MR. GOLD: It does not show that Mr.  
28          Crook filed the assignment but it shows the  
29          assignment to Joseph Herbert and it shows the

1  
2 assignment to Lutz and it does not show any  
3 assignment to Crook.

4 MR. ARONSTEIN: Your Honor, it is entitled  
5 "Certificate of Disposition of Judgment" and  
6 it is a certification that it is a direct  
7 transcript from the D docket of J judgments in  
8 my office, being in the County Clerk of New York  
9 County.

10 It was my recollection, your Honor, that we  
11 had adjourned this just for purposes of receiving  
12 documentary evidence on the question of whether  
13 or not the assignment was filed. This is debtor's  
14 evidence, and I have some evidence also, your  
15 Honor.

16 THE REFEREE: Off the record.

17 (Discussion off the record).

18 THE REFEREE: Mark it Debtor's Exhibit 101  
19 of this date.

20 (Certification from County Clerk's Office  
21 marked in evidence as Debtor's Exhibit 101).

22 MR. GOLD: I don't know what Mr. Aronstein  
23 wants to do now. The hearing was adjourned for  
24 the sole purpose of our obtaining a transcript  
25 from the County Clerk and have it marked in

evidence.

3 THE REFEREE: Let's hear what he wants  
4 to do.

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MR. ARONSTEIN: I offer, your Honor, a  
certified copy of the assignment of November  
28th, 1969, with a certificate of the Clerk of  
the County of New York indicating so, certifying  
that the original of this was filed in the  
office of the County Clerk of New York and of  
the Supreme Court, New York County, on June  
22nd, 1970.

Now, if Mr. Gold will take the stand I  
think I can clarify his confusion. I think  
he didn't look far enough.

16                          Further, your Honor, as profferred  
17                          Exhibit C on behalf of the creditor is a duly  
18                          certified transcript of the entire minute book  
19                          relating to the case of Law Research Service  
20                          vs. Western Union on file in the office of the  
21                          County Clerk of the County of New York, which  
22                          shows on June 22, 1970 the filing of an assignment  
23                          in the case of Law Research vs. Western Union.

THE REFEREE: Mr. Gold?

25 MR. GOLD: In the interests of the truth

2  
I have no objection.3  
THE REFEREE: I was sure you wouldn't because  
4  
you started to say before that was the sole  
5  
purpose, and that is just what he is doing.6  
Off the record.7  
(Discussion off the record).8  
THE REFEREE: You can mark that.9  
(Assignment made November 28th, 1969  
10 by Law Research Service, Inc. to John Herbert  
11 Crook marked in evidence as Creditor's Exhibit  
12 B of this date).13  
(Certificate of the County Clerk of the  
14 minute book entries referred to marked in  
15 evidence as Creditor's Exhibit C of this date).16  
MR. ARONSTEIN: I have nothing further on  
17 that aspect, your Honor.18  
However, at the time we last met Mr. Gold  
19 conceded on behalf of the debtor that due service  
20 of the assignment had been made on Western Union  
21 Telegraph Co. in December of 1969.22  
At that time we did not offer in evidence,  
23 and I would like to do so now, the certified mail  
24 receipt signed by the attorneys or the then  
25 attorneys of record of the debtor in the Supreme

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Court action, and the certified mail receipt  
2 signed by the then attorneys of record for  
3 Western Union in the Supreme Court action,  
4 acknowledging the receipt of the true copy of  
5 the same assignment, only to round out the  
6 record and because there is some indication in  
7 the cases cited in my brief --  
8

9

MR. GOLD: You don't have to put that in;

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
(In Bankruptcy)

3a-51

In the Matter  
of  
**LAW RESEARCH SERVICE, INC.,**  
Debtor.

No. 71-B-598

United States Court House  
Foley Square, New York, N.Y.

December 5, 1972,  
11:00 o'clock A. M.

Before:

HON. ASA S. HERZOG

Referee

HEARING ON ORDER TO SHOW CAUSE vs. JOHN HERBERT CROOK

Appearances:

KRAUSE, HIRSCH & GROSS, ESQS.,  
Attorneys for Debtor,  
41 East 42nd Street,  
New York, New York,  
BY: HYMAN GOLD, ESQ.,  
Of Counsel.

BEATRICE R. GOTTLIEB  
Official Court Reporter  
Room 230, United States Courthouse  
Foley Square, New York, N. Y. 10007  
REctor 2-3933

2 Appearances: (Continued):

3 KRISEL, LESSALL, MINTZ & DOWLING, ESQS.,  
4 Attorneys for John Herbert Crook,  
5 598 Madison Avenue,  
6 New York, New York,  
7 BY: RICHARD L. ARONSTEIN, ESQ.,  
8 Of Counsel.

9 Also Present: ELLIAS C. HOPPENFELD,  
10 Officer of debtor.

11 12 13 14 15 16 17 18 19 20 21 22 23 24 25  
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11 MR. GOLD: Your Honor, I brought on an order  
12 to show cause to restrain the claimant from pro-  
13 ceeding in an action in Texas, because it appeared  
14 to me that he is playing both ends against the middle.

15 You may recall, your Honor, that when we ob-  
16 jected to the claim initially we said that the debtor  
17 had made an assignment to Mr. John Herbert Crook of  
18 a claim against Western Union to the extent of some  
19 \$25,000.

20 The agreement provided that if the assignment  
21 was not paid by a certain date the assignee, Crook,  
22 the claimant, could disregard the agreement and pro-  
23 ceed in the lawsuit.

24 You were right in that decision --

25 THE REFEREE: What was my decision?

2                   MR. GOLD: At that time off the Bench you  
3                   said to me, "You did not pay the \$25,000, and he can  
4                   disregard and continue with the suit, because this  
5                   said if he was paid he would have to discontinue that  
6                   suit."

7                   But he made an election -- he was in this court  
8                   before you -- to enforce payment of \$25,000 under the  
9                   agreement. He had not disregarded the agreement.  
10                  He is trying to enforce the agreement, get his  
11                  \$25,000 and still continue with his litigation down  
12                  in Texas.

13                  Now, what he is trying to do is split the agree-  
14                  ment and say part of it is enforceable and part is  
15                  not enforceable, and I say to you that our Court of  
16                  Appeals and our Appellate Division have said "You  
17                  take a look at the whole agreement," and he cannot  
18                  do what he is doing now. He cannot say I am en-  
19                  forcing that agreement and I want my \$25,000, it was  
20                  assigned to me, and then continue with the lawsuit  
21                  down there as though the agreement does not exist.

22                  If he wants to disregard the agreement, he  
23                  should withdraw his proceeding here and go down to  
24                  Texas and proceed there. But he comes here before  
25                  you and asks you to enforce the agreement and direct

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2 payment to him of the \$25,000 and repay it to him,  
3 that is, if you decide to direct us to pay it to him,  
4 then he cannot continue with this other litigation.  
5 He cannot have both.

6 THE REFEREE: Why? Supposing he has a non-  
7 dischargeable debt. Why can't he get what he can get  
8 in the Chapter XI proceedings, and then go after them  
9 for the balance in the lawsuit?

10 MR. GOLD: He is enforcing the agreement which  
11 does not make time of the essence. The agreement says  
12 if he gets paid \$25,000 --

13 THE REFEREE: Mr. Gold --

14 MR. GOLD: Your Honor, in this case he had a  
15 lawsuit pending down in Texas, and the Texas attorney  
16 and the debtor entered into an agreement whereby  
17 there was an assignment executed in favor of Crook  
18 to the extent of \$25,000.

19 THE REFEREE: Of the judgment against Western  
20 Union.

21 MR. GOLD: That is right. They specify how  
22 they arrive at this \$25,923.65, and they work it out  
23 that \$15,000 was a repayment of an amount paid by  
24 Crook, and the balance was \$10,423.65, which was  
25 attorneys' fees, I guess, and disbursements.

2           And the debtor executed such an assignment,  
3         and gave it to him.

4           Now, it is true that payment was not made under  
5         the assignment, and so he had a right to say "You  
6         did not make payment under the assignment -- I dis-  
7         regard the agreement and will not enforce it and  
8         proceed with my lawsuit in Texas."

9           Now, he does not do that. He comes here and  
10        says to you, "I want to enforce that agreement, the  
11        agreement which says if you pay me \$25,000" -- true,  
12        that was to be by a certain date -- and time is not  
13        of the essence, then we will discontinue our law-  
14        suit and we will be satisfied with our claim in  
15        full.

16           I say to you that he cannot come before you  
17        and say to you, enforce that agreement, which is  
18        what he is asking, and at the same time continue the  
19        lawsuit down in Texas.

20           THE REFEREE: Let's assume what you are saying  
21        is true, and let's assume that arguendo -- by the  
22        same token what is his position if you now object  
23        to his claim, as you do? You object to the claim  
24        on the assignment, is that right?

25           MR. GOLD: Right. Then you make a decision

2 and you decide say that I am right, in which event  
3 he cannot enforce the assignment here, and he is  
4 remitted to his suit down in Texas; or you say I am  
5 wrong and he is right, and you enforce the assignment  
6 and you direct the debtor to pay him the \$25,000.  
7 You say he has a good lien, but the money is in our  
8 possession.

9 THE REFEREE: What is the basis of your ob-  
10 jection to his claim, the lien to the \$25,000, if  
11 any?

12 MR. GOLD: If you remember, your Honor, I  
13 called your attention to a provision in the CPLR  
14 which requires them to protect their assignment by  
15 filing with the County Clerk an assignment of their  
16 judgment. If you remember, I called it to your at-  
17 tention.

18 THE REFEREE: Yes.

19 MR. GOLD: I myself went down there, and I  
20 obtained a transcript of the judgment, and lo and  
21 behold there was nothing on it.

22 Mr. Aronstein went down there and he managed --  
23 I could not, but he found and was able to produce  
24 apparently to your satisfaction, although you have  
25 not decided that, that he did file that assignment.

1                   Do you recall that?

2                   THE REFEREE: Yes.

3                   MR. GOLD: So now, in response to that ques-  
4                   tion you may very well decide -- although I do not  
5                   want you to -- but you may decide to enforce the  
6                   assignment and say it is a good assignment and he  
7                   has a good lien, and direct us to pay it, and if we  
8                   pay it and he satisfies the claim, then he cannot  
9                   continue the litigation.

10                  THE REFEREE: Let me ask counsel now: Why  
11                  should you have both? Suppose I sustain your lien  
12                  claim, why should you have the lawsuit? You want  
13                  your cake, and you want to eat it, too.

14                  MR. ARONSTEIN: Well, my client's position is,  
15                  your Honor, as expressed in this agreement which is  
16                  attached to the moving papers before your Honor.

17                  The debtor some two years before becoming a  
18                  debtor, for its own purposes, sought and obtained  
19                  an adjournment of this pending action against it for  
20                  damages for fraud, as well as for breach of contract.

21                  Upon the assignment by the debtor, Law Research  
22                  Service, Inc., of a portion of its claim against  
23                  Western Union and of a judgment therefrom, and by  
24                  the express terms of disagreement, which Mr. Gold

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2       refuses to read in detail, it states that the assign-  
3       ment is a valid one, that in the event the assigned  
4       amount is not paid by a date certain, there is no  
5       provision for any voiding of the assignment or va-  
6       cating of the assignment, but it authorizes the party  
7       to proceed against Law Research, not for its com-  
8       pensatory contract damages, but in its action for  
9       fraud.

10             THE REFEREE: You signed an agreement settling  
11       that action for the assignment. Now I say that you  
12       cannot have both. Either you settle the action and  
13       I uphold the assignment, or if the assignment is dead  
14       and I don't uphold it, then you have your action,  
15       but I don't think you can have both and say that the  
16       agreement between the parties is not enforceable,  
17       and therefore I am continuing my action, and the  
18       agreement between the parties is enforceable, and I  
19       want that assignment. You have got to take a po-  
20       sition.

21             MR. ARONSTEIN: First of all, your Honor is  
22       unnecessarily accepting Mr. Gold's verbal reflections  
23       of what the agreement says. I think your Honor would  
24       find if your Honor were now actually called upon to  
25       decide it, that the agreement does not call for any

2 settlement. It calls for a conditional settlement.  
3 The debtor breached this agreement by failing to  
4 provide for the condition, and therefore it cannot  
5 complain that the balance of the agreement which  
6 provides for both --

7 THE REFEREE: What you want me to say is that  
8 the agreement is partially enforceable and that you  
9 can enforce the part that you like, but you cannot  
10 enforce the portion which settles the suit.

11 MR. ARONSTEIN: You Honor, I did not say we  
12 want both sides of that. We are not required to  
13 settle unless payment be made by May 31st, 1971.  
14 Therefore we have no contractual obligation to settle  
15 this lawsuit.

16 THE REFEREE: You want to go ahead with the  
17 lawsuit.

18 MR. ARONSTEIN: Your Honor, may I say --

19 THE REFEREE: Now you want to go ahead with the  
20 lawsuit because you say the assignment was not made.

21 MR. ARONSTEIN: The conditions which would  
22 require us to continue the lawsuit --

23 THE REFEREE: Was not met, and therefore you  
24 want to go ahead with it.

25 MR. ARONSTEIN: That's right.

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2           THE REFEREE: But you say the agreement is  
3           still valid as far as the assignment was concerned.

4           MR. ARONSTEIN: By its express terms.

5           THE REFEREE: Let me ask you, what is the con-  
6           sideration for it?

7           MR. ARONSTEIN: An adjournment of some three  
8           and a half months at a very critical time.

9           May I say that is the exact issue that is al-  
10          ready before the Court, and more specifically in the  
11          District Court.

12          Your Honor will recall that we brought on a  
13          proceeding under Section 17 to determine the non-  
14          dischargeability of the claim which is actually  
15          represented by that Texas action, the difference  
16          being in Texas we have another co-defendant, and  
17          here we have the debtor, Law Research Service. We  
18          brought on that proceeding to determine non-discharge-  
19          ability.

20          The attorney for the debtor filed its answer,  
21          setting up the exact same issues that they now seek  
22          to bring on before your Honor and ask your Honor to  
23          determine.

24          Your Honor decided in that non-dischargeability  
25          application there should be a jury trial, and it will

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2 be tried before the United States District Court  
3 before a jury, at which time the exact issues again  
4 presented here for your Honor's consideration will  
5 be decided.

6

THE REFEREE: No, no --

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MR. ARONSTEIN: If your Honor will review the  
8 pleadings and the application for non-discharge-  
ability, your Honor will find that exact issue here  
10 raised in 1972 was raised then.

11

Now, there is one further thing --

12

THE REFEREE: I have something else before me  
now. I have an objection to your claim that you  
have a right to a piece of that judgment by way of  
15 assignment.

16

MR. ARONSTEIN: That's right, Judge.

17

THE REFEREE: And I am going to decide one of  
18 two things, either that assignment is good, in which  
19 case I will stay that action in Texas permanently,  
20 and you will get your \$25,000, or I am going to hold  
21 that the assignment to you is invalid for one reason  
22 or another, in which case the dischargeability of the  
23 debt will be determined by the District Court. ]

24

MR. ARONSTEIN: May I say this, your Honor:  
25 The application here before this Court aside from

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2 its being, I believe, presently pending in a non-  
3 dischargeability proceeding, is also one in which  
4 your Honor is called upon for no reason, which I  
5 think concerns the Bankruptcy Court, to decide in  
6 this proceeding the effect of an allowance or a dis-  
7 allowance of our claim, of our assignment claim.

8 Your Honor is being called upon to perform a  
9 task. The Court is being called upon to render a  
10 decision as to the legal and factual effect of the  
11 Court's decision, which is not made yet.

12 Now, I will submit that your Honor is --

13 THE REFEREE: I don't know what you are talk-  
14 ing about. I don't think you are making sense at  
15 all.

16 MR. ARONSTEIN: Because the objection to our  
17 claim was a simple, straightforward objection.

18 Now I would like to explain something further,  
19 your Honor. Because of other extraneous proceedings,  
20 which have nothing to do with this Chapter XI, an  
21 order to show cause was brought on before your Honor,  
22 signed on November 22nd.

23 THE REFEREE: I think this is part of that same  
24 motion, and I am going to treat them all as part of  
25 one motion.

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MR. ARONSTEIN: Now I would like to bring something to the Court's attention. I am sure Mr. Gold is not personally and directly aware of it, but I think that on November 22nd, when your Honor was asked to sign this order to show cause, I believe your Honor was grossly misled and deceived for the following reason:

Your Honor was asked to stay an action in Texas entitled John Herbert Crook against Elias C. Hoppenfeld --

MR. GOLD: Are you charging me personally?

MR. ARONSTEIN: On the contrary, Mr. Gold --

THE REFEREE: I do not want colloquy between counsel.

MR. GOLD: I would like to know on the record whether he is charging me personally with grossly concealing certain facts from you --

THE REFEREE: Let's go ahead with this.

MR. ARONSTEIN: My statement, as I recall it, a moment ago, is that Mr. Gold knows nothing personally about this, but the debtor does, as a matter of record.

Your Honor, there is an order to show cause which alleges that the creditor is seeking to bring

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2 a trial of an action pending in Texas, in the Judicial  
3 District Court in Texas for the same relief sought in the  
4 matter that is before your Honor, and that if the relief  
5 is not granted and this order to show cause is not signed,  
6 the matter will be decided in Texas rather than here.

7 In and of itself, I do not believe that is  
8 sufficient reason to justify the issuing of an order to  
9 show cause. Nevertheless, what your Honor was not told  
10 is that there is no such action pending in Texas. Instead  
11 there are two actions pending in Texas, one is an action  
12 now entitled John Herbert Crook against Law Research  
13 Service, Inc., which, your Honor, has been stayed in com-  
14 pliance with your Honor's blanket order since June of  
15 1971, and no one has ever attempted to bring that case on  
16 for trial.

17 However, what did happen is that the action  
18 against Mr. Hoppenfeld and Mr. Thatcher was severed from  
19 the action against Law Research Service by an order of  
20 severance entered in the Texas court on October 3, 1972,  
21 approved as to form by the Texas attorney for Law Research  
22 Service, and I am sure Mr. Gold has not heard from him,  
23 but I am sure that Mr. Hoppenfeld has, and that created  
24 two separate and distinct actions, one against Law Research,  
25 the debtor, which is not on trial and never threatened to

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2       be --

3           THE REFEREE: What is left?

4           MR. ARONSTEIN: An action against Mr. Hoppen-  
5           feld which was to be brought on for trial, I under-  
6           stand, on November 27th.7           THE REFEREE: And Thatcher was severed from  
8           the Law Research?9           MR. ARONSTEIN: By a duly authenticated cer-  
10          tified order of severance.

11          THE REFEREE: Let me see it.

12          MR. GOLD: Your Honor, if Mr. Aronstein had  
13          filed a responsive pleading to the order to show  
14          cause, you would have certain facts before you. I  
15          don't know what you have here except some statements  
16          Mr. Aronstein is making based upon what he was advised  
17          by some people down in Texas.18          MR. ARONSTEIN: Your Honor, I am offering docu-  
19          mentary evidence, and again Mr. Gold is surprised.

20          THE REFEREE: Have you seen this?

21          MR. GOLD: No. As I say, had he filed a re-  
22          sponsive pleading, then we would know what the issue  
23          is, and know how to reach the issue. But he did not.  
24          He makes statements and he hands up papers to you --

25          THE REFEREE: Take a look at them, a certified

copy of the order severing the action, and starting a separate docket sheet in an action by Crook against Hoppenfeld and Thatcher.

MR. GOLD: I have seen them now, and I still make the same argument I made before.

If he is asking you to enforce a claim which he filed here, and by the way he filed a claim after confirmation --

THE REFEREE: His claim was against the corporation.

MR. GOLD: That's right, and he is trying to enforce an agreement which says that he is entitled to \$25,923. If he wants it, he is supposed to satisfy it, not only against the debtor, but against two employees of the debtor.

I say to you that if you are going to give it to him, then you will have to give it to him pursuant to the agreement, and he is estopped from proceeding any further.

THE REFEREE: I will take it under advisement.

Mark that in evidence, and give it to me.

(Paper produced by Mr. Aronstein marked as Exhibit A.)

MR. GOLD: May I say there is nothing in the

2 record to support Mr. Aronstein's statement that  
3 the adjournment was granted on the basis of an agree-  
4 ment by the debtor to pay \$25,000 solely for the ad-  
5 journment. There is nothing in the record to sup-  
6 port that.

7 THE REFEREE: When can I get your brief?

8 MR. GOLD: Monday.

9 THE REFEREE: Decision is reserved, and the  
10 stay is continued pending decision.

11 MR. GOLD: I think you ought to hold everything  
12 in status quo until you make your decision.

13 THE REFEREE: The stay is continued against all  
14 defendants in the Texas action. 1/2/62

15 (Hearing concluded.)

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VLF. EX. 10 (14)  
3-3-71 MGS

AGREEMENT made this 28th day of November 1969  
between JOHN HERBERT CROOK, of 1110 San Jacinto, Austin,  
Texas, hereinafter referred to as the plaintiff, and  
ELLIAS C. HOPPENFELD and LAW RESEARCH SERVICE, INC., a  
corporation, having an office for the transaction of  
business at 60 Hudson Street, New York, New York, here-  
inafter referred to as the defendants;

W I T N E S S E T H :

WHEREAS, the plaintiff commenced an action in  
the 126th District Court of Travis County, Texas against  
the defendants under Cause number 161,798, which suit is  
pending; and

WHEREAS, the defendants are desirous of adjourn-  
ing the trial of the said suit until May 31, 1970 and mak-  
ing certain other provisions in regard thereto, it is  
agreed as follows:

1. Defendant Law Research Service, Inc.  
shall execute and deliver to plaintiff a duly acknowledged  
assignment to the extent of and in the amount of \$25,923.65,  
together with interest thereon at the rate of 8% per annum  
from the date hereof to the date of payment, of its claim

EX

and demand against Western Union Telegraph Co. for damages for breach of contract, which claim has been asserted by the said defendant against Western Union Telegraph Co. in a certain action now pending in the Supreme Court of the State of New York, County of New York, under the name and style of "Law Research Service, Inc., Plaintiff, against Western Union Telegraph Co., et al., Defendants," New York County Index number 10092/1967, and of any judgment entered or to be entered on said claim, and any sums recovered or paid therefrom or thereon, whether by settlement, compromise, execution, or otherwise. The said amount of \$25,923.65 is computed by adding the sum of \$15,500 heretofore paid by the Plaintiff to the Defendants pursuant to a written franchise agreement and the sum of \$10,423.65 expended by the Plaintiff in reliance upon the franchise agreement.

2. Plaintiff shall adjourn the trial of the action now pending in the 126th District Court of Travis County, Texas, against the defendants to May 31, 1970, at which time, if the aforesaid assignment has not been paid in full, the plaintiff may proceed to the trial of the suit against the defendants in the said District Court of Travis County on the merits as if this Agreement had not been executed.

3. The said assignment is made and delivered without prejudice to the rights of the parties in the suit now pending in the District Court of Travis County except as herein provided; in the event the assignment is not paid and satisfied in full before May 31, 1970, the Trial therein may proceed, and neither party may use the fact of the assignment or of the execution of this Agreement on the trial as an admission or declaration against the other.

4. Upon full satisfaction and payment of the said assignment before May 31, 1970, the plaintiff shall discontinue the action in the 126th District of Travis County, Texas between the parties without costs or expense to either party, return the franchise and materials therefor supplied by the defendant, and the parties shall exchange general releases.

5. The defendants covenant and warrant that the claim against Western Union Telegraph Co. is valid and subsisting; no part of the claim or any judgment entered thereon has heretofore been assigned or encumbered by Law Research Service, Inc. in excess of \$200,000 besides contingent attorneys' fees; they will not satisfy or discharge said claim or any judgment thereon without the express written consent of the plaintiff until the said assignment has been paid or satisfied in full; and until said assignment has been paid

or satisfied, they will hold any money or thing of value received by them on account of said claim in trust of the benefit of the plaintiff and will account to him therefor.

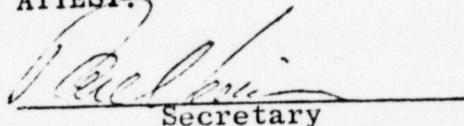
IN WITNESS WHEREOF, the parties have executed this Agreement the day and date first above written.

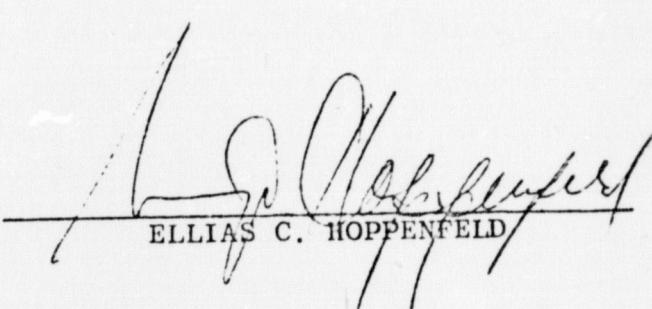
LAW RESEARCH SERVICE, INC.

By

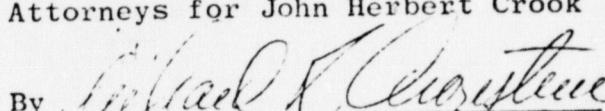
Elias C. Hoppenfeld, President

ATTEST:

  
Secretary

  
ELLIAS C. HOPPENFELD

MALONEY, BLACK & HEARNE  
Attorneys for John Herbert Crook

By   
Richard L. Aronstein

STATE OF NEW YORK ) SS.:  
COUNTY OF NEW YORK )

On this 28th day of November, 1969 before me personally came ELLIAS C. HOPPENFELD, to me known, who being by me duly sworn, did depose and say that he is the President of Law Research Service, Inc., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

*Rita Sears*

Notary Public

RITA SEARS  
Notary Public, State of New York  
No. 31-3577700  
Qualified in New York County  
Term Expires March 30 1971

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) SS.:

On this 28th day of November, 1969 before me personally came ELLIAS C. HOPPENFELD, to me known and known to me to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

*Rita Sears*

Notary Public

RITA SEARS  
Notary Public, State of New York  
No. 31-3577700  
Qualified in New York County  
Term Expires March 30 1971

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) SS.:

On this 28th day of November, 1969 before me personally came RICHARD L. ARONSTEIN, to me known and known to me to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

*Rita Sears*

Notary Public

RITA SEARS  
Notary Public, State of New York  
No. 31-3577700  
Qualified in New York County  
Term Expires March 30 1971

ASSIGNMENT made November 28, 1969 by LAW RESEARCH SERVICE, INC., a corporation having its principal place of business at 60 Hudson Street, New York, New York, as Assignor, and JOHN HERBERT CROOK, having an office at 1110 San Jacinto, Austin, Texas, as Assignee.

WHEREAS, in or about 1967, Assignor commenced an action in the Supreme Court of the State of New York, County of New York, against Western Union Telegraph Co., R. W. McFall, Charles deBretteville, Harry E. Figge, Jr., William D. Gaillard, Eugene M. Geddes, Leonard H. Goldenson, John S. Hutchins, Clarence H. Linder, W. P. Marshall, T. F. McMains, John F. Rich, Harper Sibler, Jr. and Louis Yaeger as defendants, under Index No. 20092/1967, asserting a claim and demand for breach of contract against said defendants, in which action a decision was rendered on May 27, 1968 by Supreme Court Justice Irving L. Levey, finding that defendant Western Union Telegraph Co. breached its agreement with Assignor and directing assessment of damages resulting therefrom;

NOW THEREFORE, for value received the Assignor hereby assigns to the Assignee the interest of the Assignor in said claim and demand and any judgment entered or to be entered thereon and the sums of money that may be obtained by

means thereof or as a result of any settlement or compromise of the said claim and demand or judgment to the extent and amount of \$25,923.65, together with interest thereon at the rate of 8% per annum from the date hereof.

The Assignor hereby irrevocably appoints the Assignee its attorney, with power of substitution and revocation, to use all lawful means for the recovery of the amount of \$25,923.65 together with interest thereon at the rate of 8% per annum from the date hereof to the date of payment, due or to become due on said claim and demand or judgment, and upon payment to acknowledge satisfaction or to discharge such judgment to the extent of said sum of \$25,923.65 with interest thereon at the rate of 8% per annum from the date hereof to the date of payment.

The Assignor represents and covenants that it will not collect and receive any part of said claim and demand or judgment nor release or discharge such claim and demand or judgment unless and until payment to the Assignee has been made in the sum of \$25,923.65 with interest thereon at the rate of 8% per annum from the date hereof to the date of payment; and that such claim and demand or judgment to the extent provided is free from liens of attorneys.

IN WITNESS WHEREOF the Assignor has caused these

presents to be signed and acknowledged the day and date  
first above written.

LAW RESEARCH SERVICE, INC.

By Elias C. Hoppenfeld  
Elias C. Hoppenfeld, President

ATTEST:

V. Billman  
Secretary

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) SS.:

On this 28th day of November, 1968 before me personally came ELLIAS C. HOPPENFELD, to me known, who being by me duly sworn, did depose and say that he is the President of Law Research Services, Inc., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Rita Sears  
Notary Public

RITA SEARS  
Notary Public, State of New York  
No. 31357700  
Qualified in New York County  
Term Expires March 30, 1971

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Decision  
4/20/73

In the Matter : In Proceedings for  
-of- : an Arrangement 5a-1  
LAW RESEARCH SERVICE, INC., : No. 71-E-703  
Debtor. :

DECISION ON CLAIM OF JOHN HERBERT CROOK

APPEARANCES:

KRAUSE, HIRSCH & GROSS, ESQS.  
Attorneys for Debtor

KRISEL, LESSALL, MINTZ & DOWING, ESQS.  
Attorneys for Claimant

ASA. S. HERZOG, REFEREE:

The claimant, Crook, filed claim number 502 herein for \$25,923.65 alleging therein that on November 28, 1969 the debtor assigned to him its right, title and interest in and to its claim, judgment and proceeds therefrom against The Western Union Telegraph Company to the extent of \$25,923.65 with interest at the rate of 8% from November 28, 1969 to day of payment.

The debtor served and filed an omnibus objection to various claims filed in this proceeding, including an

objection to this particular claim, alleging: "Debtor has already filed objection to creditor's secured claim and repeats same herein; Debtor's Schedules indicate liability, if any, of \$15,500".

5a-2

The objection to the claim came on for a hearing before me on October 31, 1972, and was concluded on November 6, 1972. From the testimony adduced and the several exhibits introduced in evidence at the hearing, the following is found to be the transaction between the parties, and pursuant to Federal Rules of Civil Procedure 52(a) comprises my

F I N D I N G S      O F      F . A C T :

Claimant was a franchisee of the debtor, and prior to December 28, 1969 commenced an action in the State of Texas against the debtor and two of its employees, involving the franchise agreement which had been entered into in 1966.

During the pendency of that suit, an agreement was entered into among the parties. The agreement (Debtor's Exh.1) recited the pendency of the Texas law suit, and that

"the defendants are desirous of adjourning the trial of said suit until May 31, 1970 and making certain other provisions in regard thereto". (emphasis added)

The agreement then provided for debtor to execute and deliver the assignment of "its claim and demand against Western Union" in the action pending in the New York Supreme

Court "and of any judgment entered or to be entered on said  
claim" and of "any sums received...by settlement, compromise,  
..." to the extent of \$25,923.65, representing \$15,000 paid  
by claimant, for the franchise and \$10,423.65 expended by  
claimant in reliance thereon.

The agreement then provided for adjournment of the Texas suit to May 31, 1970, but with leave to proceed to the trial on the merits "as if this agreement had not been executed", if the aforesaid assignment "has not been paid in full" by that time. In that event, neither party would use the assignment or agreement as an admission or declaration against the other.

On the other hand, "upon full satisfaction and payment" of the assignment before May 31, 1970, the action was to be discontinued and "the parties shall exchange general releases".

The agreement ends with the debtor's covenant that the Western Union claim was "valid and subsisting" and not assigned in excess of \$200,000 and contingent legal fees, and agreeing not to discharge the claim or any judgment without claimant's consent, and to "hold any money or thing of value received by them on account of said claim in trust of (sic!) the benefit of the plaintiff and will account to him therefor".

The assignment provided for in the agreement was  
executed and delivered (Creditor's Exh.B) and assigned the  
interest of the debtor "in said claim and demand and any  
judgment entered or to be entered thereon and the sums of  
money that may be obtained by means thereof or as the result  
of any settlement or compromise ... to the extent and amount  
of \$25,923.65, together with interest ...".

5a-4

The assignment (Creditor's Exh.B) was duly served  
upon Western Union (concession of counsel for debtor, SMP.85)  
and was duly filed with the New York County Clerk's office  
on June 22, 1970. [See stamp of County Clerk on reverse side  
of Assignment, Exh. B].

On June 23, 1970, a judgment was entered in the  
Supreme Court, New York County, in favor of debtor against  
Western Union Telegraph Company, in the amount of \$1,064,551.61.

On June 18, 1971, the debtor filed a petition for  
an Arrangement, pursuant to Chapter XI of the Bankruptcy Act.  
On June 20, 1972, the debtor's Arrangement was confirmed,  
the court automatically retaining jurisdiction, for allowance  
or disallowance of claims pursuant to §368 of the Act. Ad-  
ditionally, the order of confirmation reserved jurisdiction  
generally and particularly over all disputed claims and the  
funds deposited by debtor with the court appointed distributor.

During the course of the arrangement proceeding,  
the judgment against Western Union was compromised and  
settled for the sum of \$1,440,000.00, and an order authorizing  
such compromise was made and entered by this court on April  
24, 1972. Pursuant to the agreement between the parties,  
the money paid by Western Union was to be subject to claims  
of those asserting liens or assignments of any part of the  
claim or judgment, and the bulk of the fund was made the  
basis of the pay-out under the arrangement.

The claim now under objection was filed after  
confirmation but within the permissible 30-day period fixed  
by §355 of the Act. The debtor recognized the claim as a  
general claim (Debtor's brief p.5), but moves for an order  
determining that said claim is not a secured claim. In other  
words, debtor asserts that the claimant is not entitled to  
have the assignment recognized and the claim paid in full  
from the fund which resulted from the Western Union settlement.

The debtor's first contention is that the assignment  
was not perfected pursuant to New York Civil Practice  
Law and Rule (CPLR) §5019c because it was filed with the  
County Clerk one day prior to the date of entry of the judgment.  
It argues that in order to be valid, an assignment  
must be filed subsequent to the entry of the judgment.

Counsel for debtor seeks to interpret the language of CPLR §5019(c) to mean that an assignment of a judgment is valid only if filed after entry of the judgment, but I cannot construe the statute to mean that at all. The statute does, as counsel argue, speak in the past tense:

"A person other than the party recovering a judgment who becomes entitled to enforce it, shall file in the office of the Clerk in which the judgment was entered ... a copy of the instrument on which his authority is based ...".

This is not to say that an assignment filed in the pending action prior to entry of the judgment is invalid. Any persons searching the records in the County Clerks Office and finding an entry under date of June 22, 1970 which reads "assignment", would certainly be put on notice that there was an assignment of the claim and judgment on file.

The assignment instrument was very careful to assign the claim and demand against Western Union and any judgment entered or to be entered thereon to the extent of \$25,923.65 and interest. In order to record the assignment of the claim before it was reduced to judgment, where else file it but in the action based upon the claim.

I am satisfied and I find that the assignment was properly perfected and served to effect an assignment of the proceeds of the settlement to the extent of \$25,923.65.

The debtor complains in its brief that the claimant wants to receive the \$25,000 but does not want to accept the same in full settlement of his claim. In other words, the debtor argues that if the assignment is upheld and the claimant is paid the amount claimed, he should not be permitted to pursue the Texas suit.

The claimant, on the other hand, argues that the assignment was given as consideration for the lengthy adjournment of the Texas suit to May 31, 1970, and, indeed, the "Whereas" clause in the agreement (Debtor's Exh.1) supports that contention, reciting, as mentioned hereinafter, "the defendants are desirous of adjourning the trial of the said suit until May 31, 1970 ...".

Apparently, it was a matter of great consequence to the debtor that the Texas case be adjourned and it was willing, in consideration thereof, to execute and deliver the assignment in question. In any event, the agreement which provided that if the assignment was not "paid in full" by May 31, 1970, the claimant could proceed with the Texas suit on the merits "as if this agreement had not been executed" contained no provision nullifying the assignment if it were not paid by May 31, 1970.

I construe the agreement between the parties to  
5a-8

mean that should debtor fail to satisfy the assignment by  
May 31, 1970, the claimant was free to pursue both his remedy  
to enforce the assignment and continue the suit to recover  
such additional damages as it may have sustained at the hands  
of the debtor.

The objection to defendant's secured claim is over-  
ruled and the claim is allowed as a secured claim entitled to  
participate in the proceeds of the Western Union settlement  
which have been set aside for that purpose, to the extent of  
\$25,923.65 with interest at the annual rate of 8% from  
November 28, 1969 to the date of payment.

Debtor's motion for a determination that the action  
pending in the 53d Judicial District Court of Travis County,  
Texas, be settled and discontinued, is denied. The motion  
for a permanent injunction from prosecuting the Texas action  
is denied, but claimant will be stayed from pursuing such  
action pursuant to §17c(4) of the Act pending determination  
of dischargeability of the debt.

Settle order on five days' notice in accordance  
with the foregoing.

DATED: New York, New York  
April 20, 1973

  
\_\_\_\_\_  
REFeree IN BANKRUPTCY!

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

6a-1

In the Matter : X

-of- : No. 71-B-598

LAW RESEARCH SERVICES, INC., : X

Debtor. : X

DECISION ON MOTION FOR REARGUMENT  
[CLAIM OF JOHN HERBERT CROOK]

APPEARANCES:

KRAUSE, HIRSCH & GROSS, ESQS.  
By: SALVATORE A. ADORNO, ESQ.  
Attorneys for Debtor, For the Motion

BOTEIN, HAYS, SKLAR & HERZBERG, ESQS.  
By: BERNARD BOTEIN, ESQ. and  
SIDNEY C. WINTON, ESQ.  
Special Counsel to the Debtor, For the Motion

RICHARD L. ARONSTEIN, ESQ.  
Attorney for Claimant, John Herbert Crook  
Opposed to the Motion

ASA S. HERZOG, REFEREE:

The debtor above-named objected to secured claim No. 502 in the sum of \$25,923.65 filed in these proceedings by John Herbert Crook. The debtor also moved for a determination that a certain action in Texas "be settled and discontinued" and claimant permanently stayed from prosecuting such action. By decision dated April 20, 1973 the objection to the claim was overruled, the claim allowed as a secured claim entitled.

6a-2

to participate in a certain fund in the control of this court, and the motions relating to the Texas suit denied in part and granted in part.

Before the entry of an order based on said decision of April 20, 1973, the debtor moved this court for reargument of his objection, and on reargument, for an order sustaining the objection to the aforesaid claim number 502.

In the decision dated April 20, 1973 the facts underlying the claim were found to be as follows:

"Claimant was a franchisee of the debtor, and prior to December 28, 1969 commenced an action in the State of Texas against the debtor and two of its employees, involving the franchise agreement which had been entered into in 1966.

During the pendency of that suit, an agreement was entered into among the parties. The agreement (Debtor's Exh.1) recited the pendency of the Texas law suit, and that

"the defendants are desirous of adjourning the trial of said suit until May 31, 1970 and making certain other provisions in regard thereto".  
(emphasis added)

The agreement then provided for debtor to execute and deliver the assignment of 'its claim and demand against Western Union' in the action pending in the New York Supreme Court 'and of any judgment entered or to be entered on said claim' and of 'any sums received...by settlement, compromise, ...' to the extent of \$25,923.65, representing \$15,000 paid by claimant for the franchise and \$10,423.65 expended by claimant in reliance thereon.

The agreement then provided for adjournment of the Texas suit to May 31, 1970, but with leave to proceed to the trial on the merits 'as if this agreement had not been executed', if the aforesaid assignment 'has not been paid in full' by that time. In that event, neither party would use the assignment or agreement as an admission or declaration against the other.

On the other hand, 'upon full satisfaction and payment' of the assignment before May 31, 1970, the action was to be discontinued and 'the parties shall exchange general releases'.

The agreement ends with the debtor's covenant that the Western Union claim was 'valid and subsisting' and not assigned in excess of \$200,000 and contingent legal fees, and agreeing not to discharge the claim or any judgment without claimant's consent, and to 'hold any money or thing of value received by them on account of said claim in trust of (sic!) the benefit of the plaintiff and will account to him therefor'.

The assignment provided for in the agreement was executed and delivered (Creditor's Ex.B) and assigned the interest of the debtor 'in said claim and demand and any judgment entered or to be entered thereon and the sums of money that may be obtained by means thereof or as the result of any settlement or compromise ... to the extent and amount of \$25,923.65, together with interest ...'.

The Assignment (Creditor's Exh.B) was duly served upon Western Union (concession of counsel for debtor, SMP.85) and was duly filed with the New York County Clerk's office on June 22, 1970. [See stamp of County Clerk on reverse side of Assignment, Exh.B].

On June 23, 1970, a judgment was entered in the Supreme Court, New York County, in favor of debtor against Western Union Telegraph Company, in the amount of \$1,064,551.61.

On June 18, 1971, the debtor filed a petition for an Arrangement, pursuant to Chapter XI of the Bankruptcy Act. On June 20, 1972, the debtor's Arrangement was confirmed, the court automatically retaining jurisdiction, for allowance or disallowance of claims pursuant to §368 of the Act. Additionally, the order of confirmation reserved jurisdiction generally and particularly over all disputed claims and the funds deposited by debtor with the court appointed distributor.

During the course of the arrangement proceeding, the judgment against Western Union was compromised and settled for the sum of \$1,440,000.00, and an order authorizing such compromise was made and entered by this court on April 24, 1972. Pursuant to the agreement between the parties, the money paid by Western Union was to be subject to claims of those asserting liens or assignments of any part of the claim or judgment, and the bulk of the fund was made the basis of the pay-out under the arrangement".

The claim under objection was filed after confirmation of the Arrangement, but within the permissible 30-day period fixed by §355 of the Bankruptcy Act. The debtor recognizes the claim as a general unsecured claim. The objection is addressed to recognition of the assignment and to payment in full from the fund resulting from the Western Union settlement.

The debtor argued that the assignment had not been perfected pursuant to New York Civil Practice Law and Rule (CPLR) §5019c because it was filed with the County Clerk one day prior to the entry of the judgment against Western Union. For reasons set forth in my said decision of April 20, 1973,

I held that the assignment had been properly perfected, and 6a-5 constituted an assignment of the proceeds of the settlement to the extent of \$25,923.65.

The debtor also argued, in effect, that if the validity of the assignment were upheld, then the claimant should not be permitted to proceed with the Texas suit.\* In my decision of April 20, 1973, I construed the agreement between the parties to provide that if the assignment were not "paid in full" by May 31, 1970, the claimant was free to prosecute the Texas action without affecting the validity of the assignment. In other words, I construed the agreement to mean that should the debtor fail to satisfy the assignment by May 31, 1970, the claimant could pursue both his remedy to enforce the assignment and continue the suit to recover such additional damages as he may have sustained at the hands of the debtor.

The debtor's motion is not predicated upon newly discovered evidence. Mr. Botein, special counsel to the debtor, stated on oral argument (SMP 5):

"Our motion is not predicated upon newly discovered evidence. This is a motion for reargument ... nor is it a renewal motion ..."

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\* For reasons hereinafter set forth, the issues in the Texas suit will have to be determined by the bankruptcy court.

If not predicated upon newly discovered evidence, <sup>6a-6</sup>

I must assume that the motion for reargument is based upon some error in the findings of fact or conclusions of law, or of both, in the decision of April 20, 1973. There is much validity to Crook's position that the proceeding on the objection to the claim was not a motion, but in fact a trial, that the instant motion is not reargument of a "motion", and that reargument is not a remedy available to Crook.

Although designated "motion objecting to claims", the proof of claim constituted a complaint, the objection thereto was the responsive pleading, and with the issue thus joined, there followed a trial in which evidence was adduced, exhibits introduced, findings of fact and conclusions of law made, and decision rendered. The proper remedy for an aggrieved party is to petition to review the order to be entered in accordance with the decision of April 20, 1973.

Nevertheless, the bankruptcy court has the same power as any other court, to reconsider and amend its orders, Matter of Pottasch Bros. Co., Inc., 79 F.2d 613 (2d Cir.1937), and if, as Judge Learned Hand said in that case, there is no reason why an order should be "as immutable as the Twelve Tables", there is less reason why the court cannot reconsider its decision prior to the entry of an order based thereon. But in reconsidering the decision of April 20, 1973, I decline

to consider the factual affidavits of Goodman and Hoppenfeld offered in support of the motion. Since the motion is not predicated upon newly discovered evidence, reconsideration must be founded upon the original record. No additional facts or new matter may be considered. See Simpson v. Loehman, 21 N.Y.2d 990; Grossman v. State, 25 Misc.2d 47, 207 NYS 2d 292. Goodman and Hoppenfeld were both available as witnesses at the trial and it violates fundamental rights to consider their testimony in the form of affidavits, thus effectively depriving the adversary of the right to cross-examine.

What I am concerned with at this time is whether the record adequately supports my findings of facts, whether I properly construed the agreement between the parties, and whether I overlooked or misunderstood some point of law.

First, let me dispose of the question of "perfection". I have already held in the decision of April 20, 1973, that filing the assignment with the County Clerk the day prior to entry of judgment was adequate filing within the meaning of CPLR §5019c, and I am satisfied that the reasoning which led to that conclusion is valid. The debtor now makes the point that upon the filing of the assignment, an entry was made in the Supreme Court action against Western Union in the Clerk's minute book of that action, noting an "Assignment". The debtor points to the fact that CPLR §5019c requires the clerk

to "make an appropriate entry on his docket of the judgment" and that no entry was ever made of the Crook assignment in the judgment docket book.

Aside from the fact that this statement is based upon the Goodman affidavit which I have declined to consider, I merely note that CPLR §5019c only required the debtor to file the assignment in the office of the County Clerk, and that is precisely what he did. The duty of making the appropriate entry on his docket of the judgment is imposed upon the clerk and not upon the person filing the assignment.

Debtor argues that Crook "could have perfected his interest in the Law Research claim by intervening as a party plaintiff in the action against Western Union" and points to CPLR §1018 (Brief, p.24). This is a specious argument since CPLR §1018 merely states that the action may be continued by or against the original parties "unless the court directs the person to whom the interest is transferred to be substituted or joined in the action". There is nothing in the record which indicates that the court directed Crook to be substituted or joined in the action.

But, whether filing of the assignment was premature, or whether the clerk erroneously made entry in the minute book of the action, instead of in his docket of the judgment, becomes entirely irrelevant in the light of my construction of

CPLR §5019c. This is a point raised by neither of the parties and was not included in the decision of April 20, 1973.

6a-9

The question of filing of an assignment with the County Clerk, pursuant to CPLR §5019c, arose in relation to several other claims under objection by the debtor in this case. In each instance I ruled that CPLR §5019 was not a "notice" statute and that failure to file the assignment pursuant to that section did not affect its validity.

Subdivision (c) of §5019 provides that

"a person other than the party recovering a judgment who becomes entitled to enforce it, shall file ... in the office of said county clerk, a copy of the instrument upon which his authority is based ..."

However, I do not read §501 of the CPLR as a notice rule for the protection of creditors. I see the section merely providing the means for the assignee of a judgment to protect his interest as well as that of the judgment debtor who is protected from paying the wrong party. I find it persuasive that §5019 is not a filing or recording statute but deals with the validity and correction of a judgment and the amendment of the docket. It specifies no time within which the "instrument on which his authority is based" must be filed. It is purely a permissive filing provision offering a procedure for recording changes in the status and ownership of a judgment on all dockets upon which it appears. I do not see §5019 as a "perfection"

statute within the meaning of §60a of the Bankruptcy Act. 6a-10

The debtor also argues that Crook failed to perfect the assignment by neglecting to file the same pursuant to the provisions of Article 9 of the Uniform Commercial Code [UCC]. This argument, too, was presented by the debtor in relation to other claims filed in this case based upon like assignments, and in each instance I held that perfection by UCC filing was not required.

Article 9 of the Uniform Commercial Code [UCC] requires filing to perfect security interests in certain instances, but UCC §9-104 provides that the Article does not apply to specified transactions, among which is "a right represented by a judgment".

The assignment under consideration is clearly one of a portion of any judgment which debtor might obtain against Western Union, as well as an assignment of any monies paid in settlement of the action or of the judgment.

Thus, when the judgment was entered on June 22, 1970, Crook had a "right represented by a judgment" within the meaning of UCC §9-104(h). As such, it was a transaction excluded from Article 9 of the Code and did not require filing in order to perfect the security interest.

The debtor contends that the assignment was made without "fair consideration" by an insolvent debtor. This

statement is erroneous on two counts. In the first place,  
as clearly stated in the decision of April 20, 1973, the  
consideration for the assignment was the adjournment of the  
Texas suit to May 31, 1970. The "whereas" clause of the  
agreement recites that "the defendants are desirous of  
adjourning the trial of the said suit until May 31, 1970..." 6a-11

The debtor complains of my characterizing the adjournment as "lengthy". It also complains that the finding that "apparently it was of great consequence to the debtor that the Texas case be adjourned" has no support in the testimony. Whether a six month adjournment is termed "lengthy" or whether it is, as the debtor argues, a "few months" is irrelevant. The fact remains that six months is what the debtor required (for what reason was never made clear) and six months is what it received. The adjournment certainly must have been "a matter of great consequence to the debtor" because the price it was willing to pay (for Crook's forbearance to act) was the assignment and the agreement that if Crook was not fully paid the sum of \$25,923.65 by the adjourned date, May 31, 1970, Crook would be free to continue the Texas suit. In my view, the willingness to enter in the agreement and make the assignment in consideration of the adjournment is ample support for the finding that that adjournment was, indeed, of considerable consequence to the debtor.

In the second place, although debtor's brief

6a-12

blandly asserts "Law Research was clearly insolvent at the time the assignment was given", the record is entirely barren of any proof that the debtor was insolvent when the assignment was executed on November 28, 1969, more than 18 months prior to the institution of the Chapter XI proceeding in this court. Even if I were to consider the rejected Hoppenfeld affidavit, I would necessarily find it inadequate to establish the insolvency of the debtor, in the bankruptcy sense, in November of 1969. The cases cited by debtor in support of its contention that the assignment was invalid for want of fair consideration are inapposite since they relate to transfers by insolvent debtors.

The debtor's principal grievance is my determination that since Crook had not received "full satisfaction and payment" of the assignment before May 31, 1970, he was free to enforce the assignment and continue to prosecute the Texas suit. The point is made that the absence in the agreement of an express provision nullifying the assignment, in the event payment was not made by May 31, 1970, is no basis for a finding that it could be enforced. It is pointed out that neither is there any provision authorizing enforcement of the assignment if Crook elected to proceed with the Texas action. Any possible ambiguity regarding the agreement, it

is argued, must be resolved against Crook "whose counsel 6a-13 drafted it".

The defect in this argument is that I see absolutely no ambiguity in the agreement. The agreement may have been drafted by Crook's counsel, but Elias Hoppenfeld, who signed it as president on behalf of the debtor, is, as I have had occasion to say before, a very able attorney himself, and it is inconceivable to me that the agreement would not specifically so provide, if it were the intention that the assignment be nullified if debtor failed to make payment by the date fixed and Crook proceeded to continue prosecution of the Texas suit.

I have carefully reread and analyzed the agreement and find its language and purport plain. The debtor, confronted with the trial in the Texas suit, in order to buy time, agreed to give Crook the assignment, with the clearest understanding that if the assignment were satisfied in full by May 31, 1970, the suit would be discontinued and the parties would exchange general releases. The assignment was given "without prejudice to the rights of the parties" in the Texas suit, and "in the event the assignment is not paid in full before May 31, 1970, the trial therein may proceed".

In these provisions I see no ambiguity that requires resolution by the court. The intent of the parties is clearly

stated: If the assignment were not satisfied in full by the date fixed, Crook could enforce the assignment and proceed with his suit.

6a-14

The debtor urges that the equitable principle that time is not of the essence should be applied, and that should Crook's secured claim filed in this proceeding be allowed, and he is to be paid the full amount of the assignment, he should be foreclosed from proceeding with the Texas suit to recover the additional damages to which he believes he is entitled. But, to do so would merely be to nullify the purport of the entire agreement and defeat what I find to be the clear intent of the parties.

I do not find that in reaching my decision of April 20, 1973 I overlooked any decision or principle of law which would have a controlling effect on that decision, nor that I misapprehended any fact or otherwise mistakenly arrived at that decision. Consequently, there is no basis for the motion for reargument.

The debtor has raised some questions concerning the progress of the Texas suit. Upon the filing of the petition for an arrangement, and on June 18, 1971, Referee Babitt signed an order enjoining and restraining the commencement or continuation of any suit against the debtor. That order has not been modified or vacated. Additionally, the order to show

cause, dated November 27, 1972, which initiated the instant 6a-15 proceeding against Crook, specifically stayed the Texas suit. That order has not been modified or vacated.

Additionally, Crook filed in this court an application, pursuant to §17c(2) of the Bankruptcy Act, for a determination of the dischargeability of his debt, and for judgment against the debtor, for \$64,490.66 actual and \$50,000 exemplary damages. His application timely demanded a trial by jury, and by decision dated December 9, 1971, I held that Crook was entitled to a jury trial on the issue of dischargeability, as well as of liability.

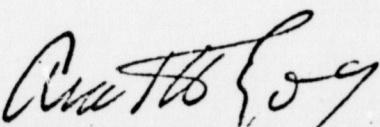
The sum and substance of all this is that any steps taken by Crook in the Texas suit subsequent to the entry of Referee Babitt's order of June 18, 1971, will be given no effect by this court. The filing of the application to determine dischargeability effectively transferred the Texas suit to the bankruptcy court and all the issues will be tried in this court. Pursuant to Bankruptcy Act §17c(4), Crook will be stayed from continuing the Texas action and from taking any steps to enforce any judgment which may have been or will be rendered in that action against the debtor.

The motion for reargument is denied. The decision of April 20, 1973 is adhered to. Since no order was entered

pursuant to the decision of April 20, 1973, the debtor's 6a-16  
right to review is preserved.

Settle order in conformity with the foregoing  
on five days' notice.

DATED: New York, New York  
October 29, 1973

  
ARTHUR J. O'FALLON  
REFEREE IN BANKRUPTCY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

7a-1

In the Matter

-of-

LAW RESEARCH SERVICE, INC.,

Debtor.

: In Proceedings  
For An  
Arrangement

: No. 71-B-598

: ORDER

At New York, New York in said District, the 17/day of November, 1973.

Claimant, JOHN HERBERT CROOK, having filed claim number 502 herein for \$25,923.65 and interest, alleging therein that on November 28, 1969 the debtor assigned to him its right, title and interest in and to its claim, judgment and proceeds therefrom against The Western Union Telegraph Company to the extent of \$25,923.65 with interest at the rate of 8% per annum from November 28, 1969 to date of payment, and the debtor, by Notice of Motion to Reduce Claims, dated July 26, 1972, and by Order to Show Cause, dated November 22, 1972, having moved this Court for an order disallowing said claim as a secured claim, allowing same as a general claim in the amount of \$15,500, and upon said allowance, permanently enjoining Claimant John Herbert Crook from prosecuting a certain action pending in the 53rd Judicial District Court of Travis County, Texas, bearing cause number 161,798, in which John Herbert Crook is plaintiff, and Law Research Service, Inc., the debtor, is defendant, and determining that said action pending in the 53rd Judicial District Court of Travis County, Texas, be settled and discontinued, and this matter having regularly come on to be heard on October 31, 1972, November 6, 1972

and December 5, 1972, and claimant having appeared by Krisel, Lessall, Mintz & Dowling, his attorneys, Richard L. Aronstein, of counsel, and the debtor having appeared by Krause, Hirsch & Gross, its attorneys, Hyman Gold, of counsel, and the issues having been duly tried, now

Upon reading and filing the claim of JOHN HERBERT CROOK, claim number 502, the Notice of Motion to Reduce Claims pursuant to Sect. 355, dated July 26, 1972, and the Application of the debtor dated July 26, 1972 annexed thereto, the Order to Show Cause, dated November 22, 1972, and the Application of the debtor dated November 21, 1972 annexed thereto, and the Court having made and filed its Decision and Findings of Fact on April 20, 1973, and the debtor having moved by Order to Show Cause, dated May 7, 1973 for leave to reargue and for reargument of the said Decision of the Court, and Botein, Hays, Sklar & Herzberg, having appeared as special counsel for the debtor on May 17, 1973, and said application having come on to be heard on May 22, 1973 and on June 25, 1973, now

Upon reading and filing the Order to Show Cause, dated May 7, 1973, the application of the debtor verified May 4, 1973 annexed thereto and the affidavit of Bernard Botein, verified June 18, 1973, in support of said application, and the affidavit of Richard L. Aronstein, verified June 25, 1973, in opposition thereto, and the Court having made and filed its Decision dated October 29, 1973, upon motion of RICHARD L. ARONSTEIN, attorney for Claimant JOHN HERBERT CROOK, it is

ORDERED, that the objection of the debtor to claim number 502 of JOHN HERBERT CROOK be and it hereby is overruled and the claim is allowed as a secured claim in the amount of \$25,923.65 plus interest thereon at the annual rate of 8% from November 28, 1969 to the date of payment, entitled to participate in the fund, being the proceeds of the settlement of the claim of the debtor against The Western Union Telegraph Company heretofore deposited in bank account number 2 of Law Research Service, Inc., debtor, Sheldon Lowe, Disbursing Agent, maintained with The Irving Trust Company, 42nd Street and Park Avenue, New York, New York, for the benefit of secured creditors and assignees of the debtor; and it is further

ORDERED, that the Application of the debtor for leave to reargue and for reargument of the Decision of the Court dated April 20, 1973 be, and it is denied; and it is further

ORDERED, that the debtor and the Disbursing Agent forthwith prepare, sign and submit to the Court for countersignature and transmittal to claimant a check drawn on said account number 2 maintained with The Irving Trust Company, payable to the order of JOHN HERBERT CROOK, in the amount of \$25,923.65 plus interest thereon at the annual rate of 8% computed from November 28, 1969 to a date three days after the date of said submission of the check to the Court, provided, however, that execution of the foregoing portion of this ORDER is stayed for ten (10) days from the date hereof, and if a notice of appeal is filed within such period, or extension of time for filing such notice of appeal is granted by this court pursuant to Rule 802 of the

Rules of Bankruptcy Procedure, the stay shall continue until disposition of such appeal; and it is further

ORDERED, that debtor's motion for a determination that the action pending in the 53rd Judicial District Court of Travis County, Texas, bearing cause number 161,798, in which JOHN HERBERT CROOK is plaintiff and LAW RESEARCH SERVICE, INC. is defendant, be settled and discontinued, be, and it hereby is denied; and it is further

ORDERED, that debtor's motion for a permanent injunction enjoining claimant from prosecuting the said action in the 53rd Judicial Court of Travis County, Texas, be, and it hereby is denied; and it is further

ORDERED, that claimant is stayed from prosecuting said action against the debtor in the 53rd Judicial District Court of Travis County, Texas, pursuant to Section 17c(4) of the Bankruptcy Act, pending the hearing and determination of claimant's Application, dated August 25, 1971, to determine the dischargeability of the debt of the debtor in favor of claimant in the amount of \$94,490.66 with interest.

S/PSA S H-0209.  
REFeree IN BANKRUPTCY



THE MATTER OF LAW RESEARCH SERVICE, INC., 71 B-598

8a-1

ENDORSEMENT

Debtor-appellant petitions this court for review of an order by Bankruptcy Judge Herzog overruling the objections of debtor-appellant Law Research Service, Inc. to a secured claim filed in these arrangement proceedings by creditor-appellee John Herbert Crook. Appellant contends that the agreement which constitutes the assignment, under which appellee claims, was an assignment of limited duration of certain of the anticipated proceeds of debtor's settlement and judgment against Western Union. Appellant says the assignment was to be effective from the date of signing of the agreement until May 31, 1970, the latter date being the time until which the action against appellant and others by appellee was adjourned, and that thereafter the assignment was to be of no effect if not satisfied by May 31, 1970.

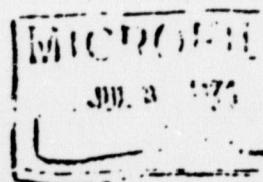
Claimant-appellee claims, on the other hand, that the assignment was to extend beyond the adjournment date and that it was given as consideration for the agreement to adjourn the proceedings. The agreement itself is vague, but not so vague as to be no agreement at all. The parties having failed to make manifest the precise treatment to be accorded the assignment after May 31, 1970, the Bankruptcy Judge rightly attributed the likely interpretation that the assignment was given in consideration for the adjournment and was to be effective sine die.

Debtor-appellant further contends that the assignment was not perfected pursuant to New York Civil Practice Law and Rules § 5019c because it was filed with the County Clerk one day prior to, rather than after, the date of entry of the judgment. Although the statute uses the past tense ("... shall file in the office of the Clerk in which judgment was entered. . .") the tense employed is not a directive. This statute regarding perfection is intended to identify the appropriate court and/or clerk's office where the fact that someone has succeeded to the position occupied by the judgment creditor is to be recorded. In any event, the Court of Appeals for the Second Circuit has recently stated that filing is not necessary for the perfection of an assignment of a judgment or claim. In the Matter of Law Research Service, Inc., F.2d (2d Cir., decided May 2, 1974) (Docket No. 73-2113). The Bankruptcy Judge's finding that the assignment was perfected is, accordingly, affirmed.

Dated: New York, New York

June 28, 1974

SO ORDERED



Constance Baker Motley  
CONSTANCE BAKER MOTLEY  
U. S. D. J.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

9a-1

In the Matter :  
of :  
LAW RESEARCH SERVICE, INC., : File No. 71 B 598  
Debtor-Appellant, : NOTICE OF APPEAL  
JOHN HERBERT CROOK, :  
Appellee. :  
-----x

Notice is hereby given that Law Research Service, Inc., the Debtor-Appellant above-named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Order of Judge Constance Baker Motley, entered in this action on June 28, 1974, affirming the Order of Bankruptcy Judge Asa S. Herzog, entered on November 12, 1973, allowing the claim of John Herbert Crook as a secured claim in the amount of \$25,923.65, plus interest thereon at the annual rate of 8% from November 28, 1969 to the date of payment, disallowing the objections thereto of Debtor-Appellant, and denying the motion of Debtor-Appellant for reargument.

Dated: New York, New York  
July 29, 1974

KRAUS, HIRSCH & GROSS  
Attorneys for Debtor-Appellant,  
Law Research Service, Inc.

and

BOTEIN, HAYS, SKLAR & HERZBERG  
Special Counsel to Debtor-Appellant,  
Law Research Service, Inc.

By Andrea C. Winton  
A Member of the Firm  
200 Park Avenue  
New York, N. Y. 10017

TO:

Richard L. Aronstein, Esq.  
Attorney for Appellee  
John Herbert Crook  
275 Madison Avenue  
New York, N. Y. 10016

AFFIDAVIT OF SERVICE BY MAIL

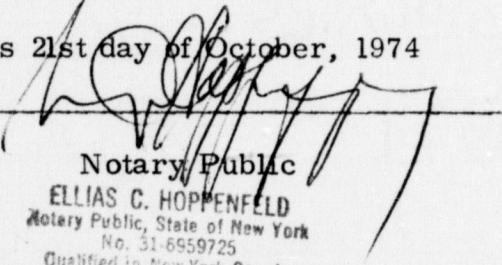
State of New York {ss  
County of New York

Linda Kardian being duly sworn, deposes and says, I am not a party to this action and am over 18 years of age. On the 21st day of October, 1974, I served two copies of the within Joint Appendix upon the following attorneys representing the following parties at their following respective addresses designated by said attorneys, by depositing a true copy of the same enclosed in a postpaid properly addressed envelope in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

Attorneys	Address	Party
Richard L. Aronstein	275 Madison Avenue New York, New York	John Herbert Crook

Sworn to before me

this 21st day of October, 1974

  
Notary Public  
ELLIAS C. HOPPENFELD  
Notary Public, State of New York  
No. 31-6959725  
Qualified in New York County  
Cert. filed with N. Y. Co. Clks. Off.  
Commission Expires March 30, 1980

